

EXHIBIT 3

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4 Pages: 1-153
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7 Exhibits: 1-11
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9

10 UNITED STATES DISTRICT COURT
11
12 EASTERN DISTRICT OF MICHIGAN
13
14 SOUTHERN DIVISION
15
16 C.A. NO.: 2:21-cv-10312-SJM-RSW
17
18 *****
19 TRUTEK CORP.,
20
21 Plaintiff,
22
23 vs.
24
25 BLUEWILLOW BIOLOGICS, INC. ROBIN ROE
26
27 1 THROUGH 10, GENDER NEUTRAL FICTITIOUS NAMES,
28
29 AND ABC CORPORATION 1 THROUGH 10
30
31 (FICTITIOUS NAMES).
32
33 Defendants.
34
35 *****
36
37 DEPOSITION of DR. MANSOOR AMIJI, a
38 witness called on behalf of the Plaintiff, taken
39 pursuant to Michigan Court Rules Chapter 2, Section
40 306, before Susan Baxter, a Court Reporter and Notary
41 Public, in and for the Commonwealth of Massachusetts,
42 at Veritext Legal Solutions, 101 Arch Street, Boston,
43 Massachusetts, on Friday, October 14, 2022, commencing
44 at 8:36 a.m.

Page 2

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Page 3

1 I N D E X
2 WITNESS DIRECT CROSS REDIRECT RECROSS
3 MANSOOR AMIJI
4 (By Mr. Kremen) 4

E X H I B I T S

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1 P R O C E E D I N G S
2

3 MANSOOR AMIJI, after being
4 satisfactorily identified and duly sworn by the
5 Notary Public, was examined and testified as
6 follows:

7
8 DIRECT EXAMINATION

9 BY MR. KREMEN:

10 Q Good morning, Dr. Amiji. My name is Stanley
11 Kremen and I represent the Plaintiff, Trutek
12 Corporation in this action. I understand that
13 you've been deposed previously; is that correct?

14 A Yes.

15 Q Could you please state your name for the record?

16 A Mansoor Amiji. Mansoor is spelled M-a-n-s-o-o-r.
17 Amiji is A-m-I-j-I.

18 MR. KREMEN: Can I have the notice of
19 deposition?

20
21 (Whereupon, Notice of Deposition, was
22 marked as Exhibit No. 1.)
23

24 Q Have you seen it before?

Page 5

1 A No, I haven't.

2 Q You're here today to comply with that notice; am
3 I correct?

4 A Yes, I am.

5 Q You understand that this is a deposition and that
6 you're being deposed today, correct?

7 A Yes.

8 Q And before I get started on the substance of
9 today's deposition, I'd like to go over a few
10 ground rules. You probably know most of them
11 because you've been deposed previously, so I'll
12 go with them anyway, okay.

13 First, the court reporter just swore
14 you in. Do you understand that you're under
15 oath?

16 A Yes, I do.

17 Q Do you understand that you must tell the truth
18 and that if you do not, you are subject to
19 penalties of perjury?

20 A Yes.

21 Q And you understand that the testimony that you
22 give today is the same as if you were testifying
23 in court?

24 A Yes, I do.

Page 6

1 Q Do you understand that you are obligated to
2 answer my questions completely, truthfully, and
3 accurately, correct?

4 A Yes.

5 Q Because the court reporter is recording our
6 conversation is absolutely essential that your
7 answers be verbal. A transcript of the
8 deposition will be generated. When a yes or no
9 answer is required, please do not nod or shake
10 your head, and responses like Uh-huh or Mm-hmm do
11 not register as an answer. So a verbal answer is
12 required. Okay?

13 A Yes.

14 Q And we should not speak over each other. Let me
15 finish asking my question before you answer. I
16 will also let you finish answering without
17 interruption. Do you understand?

18 A Yes.

19 Q Okay. If for any reason you need a break, please
20 let me know. If I'm in the middle of a line of
21 questioning when you tell me that, that you need
22 a break, I will finish the line of questioning
23 and then you can go on break; is that understood?

24 A Yes.

Page 7

1 Q And please understand that if you go to lunch or
2 go on break, you may not discuss the case or your
3 testimony with anyone including your attorney; is
4 that clear?

5 A Yes.

6 Q Are you taking any medications that could
7 interfere with your ability to concentrate on the
8 questions and answers and to answer my questions
9 as required?

10 A I'm not.

11 Q Is there any reason medical or otherwise that you
12 believe that you might not be able to answer
13 completely, truthfully and accurately?

14 A No, there isn't.

15 Q If for some reason that changes during the course
16 of the day, please let me know. Okay?

17 A Yes.

18 Q Now, your attorney may object from time to time
19 and unless she instructs you not to answer, you
20 understand that you are obligated to answer my
21 questions to the best of your ability?

22 A Yes.

23 MR. ALTMAN: Stan, before you continue,
24 before we had a brief discussion that we have

1 agreed that all objections are preserved other
2 than objections to form.

3 MR. KREMEN: Okay.

4 Q If you don't understand one of my questions, or
5 if the question is confusing, please say so and
6 ask me for clarification; is that okay?

7 A Yes.

8 Q So it's fair to assume that if you answer a
9 question that you understand it?

10 A Yes.

11 Q As an expert, you understand that I may ask you
12 questions concerning your opinions and that some
13 of those questions may challenge your opinion; do
14 you understand that?

15 A Yes.

16 Q Your Notice of Deposition required you to produce
17 certain documents within seven days prior to this
18 deposition. If you would look at that. I know
19 that you've provided me with, I think on Monday,
20 you provided me with a whole bunch of expert
21 declarations and reports. So I'm noting that you
22 did that.

23 MS. PETERSON: Yes. We produced copies
24 of publicly available prior declarations from

Page 9

1 Dr. Amiji and we objected to the remaining
2 category of requests and Dr. Amiji doesn't have
3 any other documents to produce today.

4 MR. ALTMAN: We talked about that he'd
5 be coming with invoices.

6 MR. KREMEN: Right.

7 MS. PETERSON: No, we did not. We said
8 that he would be prepared to talk about how much
9 time he has spent on the matter, and he is, so
10 you can ask him those questions.

11 MR. ALTMAN: We said that we wanted the
12 invoices.

13 MS. PETERSON: And I said that we were
14 not going to be producing copies of the invoices.
15 You can ask him questions about how much time he
16 spent. And you said as long as he's prepared
17 with an answer, that's fine. And he is prepared
18 with an answer.

19 MR. ALTMAN: By the way, what is your
20 objection to producing copies of the invoices?

21 MS. PETERSON: I don't think it's
22 called for under the rules. And we've already --
23 we've already covered all of this and I thought
24 we had an agreement. You can ask him the

Page 10

1 question and that information, he'll provide it.

2 Q Now, when were you hired as an expert by
3 BlueWillow?

4 A Sometime in March this year.

5 Q Now, were you paid a flat fee?

6 A I'm paid by the hour.

7 Q Now, what is your hourly rate that you charge
8 BlueWillow for your work?

9 A Nine hundred.

10 Q Did you send BlueWillow an invoice or invoices
11 for the work that you did?

12 A Yes, I have.

13 Q How much did you bill them to date?

14 A I believe for the work that I have done, all the
15 expert reports, it's about 50 hours.

16 Q And what is the dollar amount?

17 A Nine hundred times 50.

18 Q Okay. Did they pay you the full amount of your
19 invoice or invoices?

20 A I believe they've been paid, except for maybe the
21 last month's invoice.

22 Q You didn't bring a copy of the invoices with you;
23 is that correct?

24 A Yes.

Page 11

1 Q I'd like to request a copy of the invoice that
2 you sent to BlueWillow for your work to date.

3 Now, did you bill BlueWillow for all
4 the work that you've done for them to date?

5 A Except for the work that I've done this month, I
6 have not billed yet.

7 Q Okay. I'd also like to request a copy of future
8 invoices that will be submitted to BlueWillow for
9 all work performed by you to date.

10 MS. PETERSON: We'll take that under
11 advisement subject to our objections.

12 MR. KREMEN: Okay.

13 Q Now, what did you do to prepare for this
14 deposition today?

15 A I read my expert reports. I read the expert
16 report from the plaintiff side. I read the
17 patent in suit. Some of the prior art document
18 -- yes, mostly reading different types of
19 reports.

20 Q Did you meet with any of BlueWillow's attorneys
21 to prepare for this deposition either in person
22 or otherwise?

23 MS. PETERSON: Answer that yes or no.

24 A Yes.

Page 12

1 Q Which attorneys?

2 A Miss Peterson.

3 Q How many times?

4 A We met yesterday and on Wednesday.

5 Q For how long?

6 A About two hours each.

7 Q Was anyone else present along with Liane Peterson
8 either in person or otherwise?

9 A No.

10 Q Did you speak with anyone from BlueWillow in
11 preparation for your deposition?

12 A No.

13 Q Did your attorney or anybody else show you any
14 documents in preparation that you did not already
15 have?

16 A No. I think we just went over the reports and
17 the exhibits.

18 Q Other than your attorney, did you speak with
19 anyone from BlueWillow in preparation for your
20 deposition?

21 A No.

22 Q Have you ever had any conversations directly with
23 somebody from BlueWillow?

24 A No.

Page 13

1 Q So you never spoke with anybody from BlueWillow?

2 A No.

3 Q Have you spoken with any attorneys other than
4 Ms. Peterson regarding this case?

5 A No, I have not.

6 MR. KREMEN: Can I have the 802 patent.
7 That will be marked as Exhibit 2.

8

9 (Whereupon, United States Patent 802,
10 was marked as Exhibit No. 2.)

11

12 Q You do understand that this litigation is about
13 infringement of this patent by your client,
14 correct?

15 MS. PETERSON: Objection to form.

16 A Yes, I understand this is the patent in suit.

17 Q And this is the document that's marked as
18 plaintiff Exhibit 2.

19 MR. KREMEN: What about his curriculum
20 vitae.

21

22 (Whereupon, Curriculum Vitae, was
23 marked as Exhibit No. 3.)

24

Page 14

1 Q This document is your curriculum vitae or resume.

2 Would you just confirm that that is yours?

3 A Yes, it is.

4 Q And you wrote that all yourself, everything in
5 there is something you wrote specifically, right?

6 A Yes.

7 MR. ALTMAN: Just as a practical
8 matter, given that we're using universal
9 numbering, while we may bring an extra copy for
10 the witness, we're not going to bring copies of
11 exhibits that have already been marked in a
12 previous deposition for counsel. Just to cut
13 down on the paper.

14 MS. PETERSON: Okay.

15 MR. KREMEN: Now, I need the reports.

16 MR. ALTMAN: We'll do one at a time.

17 Which one do you want first?

18 MR. KREMEN: I guess the initial
19 invalidity report.

20
21 (Whereupon, Invalidity Report, was
22 marked as Exhibit No. 4.)

23
24 Q This is a report that you submitted that we have

Page 15

1 from you. Is this your report?

2 A Yes. This is the opening invalidity report,
3 Exhibit 4.

4 Q And it contains your opinions that you formed on
5 that subject; is that correct?

6 A Yes, it is.

7 MR. KREMEN: I need the second one.

8

9 (Whereupon, Reply Expert Invalidity
10 Report, was marked as Exhibit No. 5.)

11

12 Q This one is labeled -- now, the first one was
13 actually labeled Opening Expert Report -- Number
14 4 was Opening Expert Report of Mansoor M. Amiji,
15 Ph.D. on Invalidity. And this particular
16 document, the second document, will be Reply
17 Expert Report of Mansoor M. Amiji on Invalidity.

18 Is this your report?

19 A Yes, it is.

20 Q Now, I noticed that both of them are reports of
21 invalidity. What is the difference between those
22 reports?

23 A So this is the opening report. Exhibit 4 is
24 opening report that I provided on the invalidity

Page 16

of the patent claims, patent in suit, data. And
the reply report is based on the opinions that
are provided by the two experts and I was
rebutting those opinions.

5 Q Okay. Now, the next one will be, I guess, 6.

7 (Whereupon, Responsive Expert Report on
8 Non-Infringement, was marked as Exhibit
9 No. 6.)

10
11 Q Now, I have another one called Responsive Expert
12 Report of Mansoor M. Amiji, Ph.D on Non-
13 Infringement. That's marked as Exhibit 6. This
14 is your report also, right?

15 A Yes, it is.

16 O What is the substance of it?

17 A So, this is a report based on opinions related to
18 non-infringement of the BlueWillow NanoBio
19 Protect product based on the comments and
20 opinions of Dr. Lemmo, the Trutek expert.

21 Q Now, going back to Exhibit Number 5, which is the
22 Reply Export Report. What are you replying to in
23 that report?

24 A I'm replying to the opinions of the Trutek expert

Page 17

1 — —

2 Q Which one -- which are whom?

3 A Dr. Lemmo and Mr. Haidri.

4 Q And the Responsive Expert Report on Non-
5 Infringement, you're replying to whom?

6 A To Dr. Lemmo.

7 Q Dr. Lemmo, okay.

8 MR. KREMEN: Next one we'll mark as
9 seven.

10

11 (Whereupon, Declaration in Support of
12 BlueWillow's Claim Construction Brief,
13 was marked as Exhibit No. 7.)

14

15 Q This is the Declaration of Mansoor M. Amiji,
16 Ph.D. in Support of BlueWillow's Claim
17 Construction Brief. That's your report, right?

18

19 Q And the purpose of it is to do what?

20 A To support Bluewillow's claim construction brief

21 Q All right. Now, you haven't submitted any other
22 writings that contain your opinions in this case;
23 am I correct?

A That's correct. These are the reports.

Page 18

1 Q This is the whole domain?

2 A These are the reports and declaration.

3 Q Let me just put these in order here. Now, these

4 reports contain all of your opinions to date in

5 this case; am I correct?

6 A They do contain all the opinions to date, but if

7 there's anything new that comes from the

8 plaintiff side then I will be rebutting.

9 Q Okay. But as of today, these are your opinions,

10 right?

11 A As of today, these are my opinions.

12 Q Are you continuing to do work developing new

13 opinions?

14 A As I said, if there is anything that comes from

15 the plaintiff side, if I'm asked to opine on it,

16 I'll be looking at that evidence.

17 Q But as of today, you're not going to be

18 supplementing your opinions, am I correct, unless

19 some new evidence comes up; am I correct?

20 A That's correct.

21 Q Did you -- you're not an attorney; am I correct?

22 A No, I'm not.

23 Q Did you ever attend law school?

24 A No, I have not.

Page 19

1 Q Did you ever sit for a bar examination in any
2 state?

3 A No, I have not.

4 Q Are you a Patent Agent licensed to practice in
5 patent matters by the United States Patent and
6 Trademark Office?

7 A No, I'm not.

8 Q Have you ever heard the term MPEP?

9 A No, I have not.

10 Q It stands for the Manual Patent Examining
11 Procedure. Have you ever read it?

12 A I am familiar with the patent prosecution
13 process, but I've not read the manual.

14 Q You've not read the MPEP?

15 A No, I have not.

16 Q Let's see. Exhibit Number 6, which is your
17 Responsive Report on Non-Infringement, turn to
18 page nine.

19 A I'm here.

20 Q In paragraph 24 you say, "I've been informed that
21 a claim must be construed under the Phillips
22 standard."

23 Who informed you of this?

24 A Counsel.

Page 20

1 Q Was this the first time that you were informed of
2 that?

3 A I'm familiar with the claim construction process,
4 but the standard specifically I was informed by
5 counsel.

6 Q When were you informed of this?

7 A When I started working on the case, and
8 subsequently, when I started working on my
9 reports.

10 Q To your understanding, what is the Phillips
11 standard?

12 A Well, as I've stated in my report, it's the
13 standard that the claim are given their plain and
14 ordinary meaning as understood by the person of
15 skill in the art.

16 Q Okay. Is that always the case, that they're
17 given the plain and ordinary meaning?

18 MS. PETERSON: Objection to form.

19 Actually, just objection. He's already said he's
20 not a legal --

21 MR. KREMEN: I'm just asking what his
22 understanding is.

23 MS. PETERSON: I know. He's already
24 told you he's not a patent lawyer. And he said

Page 21

1 that --

2 MR. KREMEN: That's a speaking
3 objection.

4 MS. PETERSON: -- his understanding is
5 provided in his report, so.

6 Q In paragraph 27 on page 10, would you read it to
7 yourself?

8 A (Witness complies.)

9 Q Who informed you of this?

10 A Counsel.

11 Q When were you informed?

12 A Around the same time that I was working on my
13 expert reports.

14 Q Would you read paragraph 27 aloud for the record.
15 Would you read paragraph 27 on page 10 aloud?

16 A Yes, paragraph 27 on page 10?

17 Q Actually, the first sentence only.

18 A First sentence on paragraph 27 of page 10 says,
19 "I've been informed that literal infringement
20 requires that every limitation set forth in a
21 claim must be found in an accused product."

22 Q Keep going. Next one.

23 A "I'm also informed that direct infringement
24 requires a party to perform each and every step

Page 22

1 or element of a claimed product or method."

2 Q And the next sentence.

3 A "I've also been informed that for purposes of any
4 infringement analysis, the comparison is between
5 the properly construed claims and the accused
6 product."

7 Q Now, what is your understanding of those three
8 sentences?

9 A Based on these specific requirements in my
10 analysis, my understanding is that in order for
11 the BlueWillow product, Nano Biotech product, to
12 infringe the claims of the 802 patent, each and
13 every element of the claim has to be met.

14 Q Okay. Also, what about -- I've seen this --
15 strike that.

16 Would you agree that a patent is not
17 required to contain test data?

18 MS. PETERSON: Objection.

19 A Well, my understanding of -- and again, I'm not a
20 lawyer, so I don't know exactly what the patent
21 examiner looks for in the prosecution. But the
22 patent does require a personal skill in the art,
23 information from there that suggests that the
24 patent does enable the full scope of --

Page 23

1 Q It has to be enabled, but is it required to have
2 test data?

3 MS. PETERSON: Objection. He's not a
4 lawyer. You're asking him for opinions related
5 to legal requirements, and that is clearly not a
6 testimony that he's providing in this case.

7 MR. KREMEN: He opines on it.

8 MS. PETERSON: I disagree with that.
9 He is not providing legal testimony. He is
10 providing technical expert testimony on ultimate,
11 in the factual issues that underlie the legal
12 issues in the case, but he is not providing legal
13 opinions. He is not a lawyer.

14 MR. KREMEN: Okay.

15 Q You would also agree -- would you agree that not
16 everyone who practices in the field of pharmacy
17 or pharmacology has a Ph.D?

18 MS. PETERSON: Objection to form.
19 Vague.

20 A It depends on the practice.

21 Q But not everyone has a Ph.D, yes?

22 A Yes, it would depend on the practice. If you're
23 a clinical pharmacist, you get a PharmD degree.
24 If you're a retail pharmacist, you could have a

Page 24

1 bachelor's degree.

2 Q Now, what about a pharmaceutical formulator, does
3 a pharmaceutical formulator have to have a Ph.D?

4 MS. PETERSON: Objection to form.

5 Vague.

6 A Again, depends on in other kinds of formulations
7 that they were developing. They could have a
8 master's degree and then have practical
9 experience.

10 Q So they have a bachelor's degree and practical
11 experience?

12 A Again, if they're just simply able to develop the
13 formulation, but in the purposes of the claims of
14 the 802, that formulation also has to function in
15 specific ways.

16 MR. KREMEN: That is a non-responsive
17 question. Objection.

18 Q You have been listed as an inventor or
19 co-inventor on several patents, yes?

20 A Yes, I am.

21 Q Approximately, how many patents?

22 A About 15 or so issued patents and some that are
23 in the prosecution right now.

24 Q Were any of these US patents granted where you

Page 25

1 were the sole inventor, not co-inventor?

2 A I have two that were issued that I am the sole
3 inventor.

4 Q Now, you said you're not an attorney. Typically,
5 when you're working on preparing patent
6 applications, did you work with an attorney?

7 A Yes, I did.

8 Q Typically, who would draft the specification?

9 MS. PETERSON: Objection to form.

10 A It depends on the specific sections of the
11 specification. Sometimes they ask me to provide
12 examples, but in other parts of the
13 specification, the attorneys provided me and then
14 I reviewed.

15 Q Where there would be drawings, who would do the
16 drawings?

17 A Again, it depends on the specific drawings. But
18 generally, if these are figures that came from
19 data, I would be the one providing those.

20 Q Who would draft the claims?

21 A Again, working with the attorneys, they would
22 initially come with some understanding of the
23 claim language and then they would ask my
24 opinion.

Page 26

1 Q So they would draft it and then you would review
2 it, right?

3 A That's correct.

4 Q Now, just to get some shorthand considerations
5 out of the way, for the rest of the deposition,
6 I'll refer to the plaintiff as Trutek and the
7 defendant as BlueWillow; is that okay?

8 A That's fine.

9 Q Okay. I'll also refer to US patent number
10 8163802, which is Exhibit 2. And I'll refer to
11 that as the 802 patent; is that okay?

12 A Yes.

13 Q We'll talk about the 802 patent later. I will
14 also refer to the United States Patent and
15 Trademark Office as the USPTO. Have you heard
16 that expression before, right?

17 A Yes.

18 Q And I'll refer to the USPTO Patent Trials and
19 Appeals Board as the PTAB; okay?

20 A Yes.

21 Q Now, you've testified in other previous legal
22 matters; is that correct?

23 A Yes, I have.

24 Q What percentage of your practice is litigation

Page 27

1 related?

2 MS. PETERSON: Objection to form.

3 A So I do -- my total consulting work is around 25
4 percent.

5 Q Okay. Now, approximately, how many times have
6 you testified?

7 A In depositions or trials or both?

8 Q Both.

9 A Maybe around 20 times.

10 Q Did you ever testify at a trial in open court?

11 A Yes.

12 Q Approximately, I'm not looking for an exact
13 number, how many times did you testify at trial?

14 A Five or six.

15 Q Was your testimony always as an expert witness?

16 A Yes.

17 Q Generally, what were the subjects of your
18 testimony?

19 A Generally, related to pharmaceutical formulations
20 and drug product development.

21 Q Did they always involve patents in some way?

22 A Majority of the cases that I've been on are
23 patent related, but I've also been on some
24 contract disputes.

Page 28

1 Q Did you always generate an expert report or
2 declaration prior to your deposition or trial
3 testimony?

4 A Again, generally, in the patent cases I have.

5 Q Was there ever a time when a court did not permit
6 you to testify or declined to accept you as an
7 expert witness?

8 A No.

9 Q Has there ever been a time that your testimony
10 was limited in any way, to your knowledge?

11 A Not to my knowledge.

12 Q Did you ever testify in a proceeding before the
13 USPTO?

14 A No, I have not.

15 Q So by testimony, I'm speaking about also
16 deposition testimony.

17 A Not in front of the USPTO. I have provided
18 declarations for IPR cases.

19 Q Okay. But were you ever actually deposed in
20 those cases?

21 A By the attorneys, not by the PTO, not by the
22 Patent and Trademark Office.

23 Q Okay. Now, what kind of proceedings were they?

24 A IPR proceedings.

Page 29

1 Q Well, IPR, but were they PGR interferences,
2 appeals?

3 A Some of them were -- majority have been IPR.

4 Q So in those proceedings, any testimony you gave
5 was always by deposition, there was no open
6 court, right?

7 A That's correct.

8 Q Prior to testifying at the USPTO, did you always
9 submit a report or a declaration under oath?

10 A Yes, I did.

11 Q Okay. Was there ever a time when the PTAB did
12 not permit you to testify or refused to accept
13 you as an expert witness?

14 A I don't -- I don't know, but everything that I've
15 done so far has been accepted.

16 Q Incidentally, every time I use the word PTAB,
17 it's P-T-A-B. Did you say that there was never
18 an instance where the PTAB did not accept your
19 testimony or limited your testimony in any way?

20 A I'm not aware of.

21 Q Now, you do understand that you're testifying
22 here today as an expert witness, correct?

23 A Yes.

24 Q And you were hired to serve in that capacity by

Page 30

1 the defendant BlueWillow Biologics; is that
2 correct?

3 A Yes.

4 Q Now, what is the field of expertise to which you
5 will testify?

6 A I'm a pharmaceutical formulator. I develop
7 pharmaceutical products.

8 Q Is that list exhaustive? Do you have any other
9 fields of expertise that you're presenting
10 yourself?

11 A No. I'm an expert in the pharmaceutical
12 formulations and characterization, and
13 ultimately, applications of pharmaceutical
14 formulations for treatment or prevention of
15 diseases.

16 Q Now, in your capacity as an expert in these
17 fields, you generated two reports on the validity
18 of the 802 patent on behalf of the defendant;
19 that's correct, yes?

20 A Yes, I did.

21 Q And that is 4 and 5. Now, these reports, they
22 contain all your opinions concerning the validity
23 of the 802 patent; is that correct?

24 A Yes.

Page 31

1 Q Let's just take a look here. Turn to Page 95 of
2 Exhibit 4. At the top of the page, under the
3 heading subject matter eligibility, could you
4 read the sentence labeled as Roman numeral 12.

5 A "Analysis: Claims 1, 2, 6, and 7 are invalid for
6 being directed to ineligible subject matter under
7 35 USC Section 101."

8 Q Okay. And you allege that these claims are
9 directed to ineligible subject matter, right?

10 A Yes, I do.

11 Q Now, you would agree that because claim one
12 recites a process or a method, it falls into the
13 class of inventions that are patentable under
14 Section 101; is that correct?

15 MS. PETERSON: Objection to form.

16 A Again, my analysis for the subject matter and
17 eligibility, as I discussed in my report, is
18 based on the fact that the claims are derived
19 towards the ability of this composition or to
20 attract electrostatically, which is a well known
21 phenomena in nature.

22 Q You you express an opinion about the statute of
23 35 USC 101, what is 101?

24 MS. PETERSON: Objection.

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1 Mischaracterizes his opinion. He's not a patent
2 lawyer.

3 MR. KREMEN: Well, he very specifically
4 mentioned the statute. I have the right to
5 question him on that.

6 MS. PETERSON: He did not express an
7 opinion as to the meaning of the statute, which
8 is what you just asked him to provide. He
9 provided technical opinions relating to the
10 patent. If you want to ask him about those
11 opinions, I'm sure he's prepared to answer. But
12 he's not providing -- your question was directed
13 to what is Section 101 requiring. He's not a
14 legal expert.

15 MR. ALTMAN: Liane, that's a speaking
16 objection. They're not allowed. It's just
17 objection form.

18 MS. PETERSON: And I started off with
19 an objection to the form and Mr. Kremen followed
20 up, so I'm just answering his question.

21 MR. ALTMAN: I don't think that's what
22 took place but that's fine.

23 Q So as it stands right now, you don't know what
24 101 says?

1 MS. PETERSON: Objection.

2 Mischaracterizes his testimony.

3 A As I mentioned in my report, I apply these
4 standards in the standard. I've discussed it in
5 my report, Exhibit 4, under the specific
6 standards that I've applied to my analysis.

7 Q I'm going to present you with --

8
9 (Whereupon, US Code Section 101, was
10 marked as Exhibit No. 8.)

11
12 Q Do you know what the standard is in 101?

13 MS. PETERSON: Objection, form.

14 A As I mentioned before, I was provided with these
15 standards, and I mention these in my report,
16 specifically starting on paragraph 30, how I
17 understand -- my understanding of the patent law
18 in what was provided to me. And then subsequent
19 to that, I have discussed the various parts of
20 those standards.

21 Q Have you ever given an opinion on this standard
22 before?

23 A Yes, I'm sure I have.

24 Q I'm going to give you a copy of 35 USC 101. And

Page 34

1 could you read the statute aloud?

2 MS. PETERSON: Excuse me, what
3 deposition exhibit number are we marking this as?

4 MR. ALTMAN: Eight. I'm sorry.

5 A The document says, "Whoever invents or discovers
6 any new and useful process, machine manufacturer
7 or composition of matter, or any new and useful
8 improvement thereof may obtain a patent
9 therefore, subject to the conditions and
10 requirements of this title."

11 Q Now, is this your understanding of the standard
12 of 35 USC 101?

13 MS. PETERSON: Objection, vague,
14 ambiguous.

15 A Again, if this is the standard as you have
16 presented to me, and I mentioned in my report, I
17 specifically discuss the various aspects of those
18 standards in the context of my analysis.

19 Q Now, would you agree that because claim one is a
20 process, and claim two is a composition of
21 matter, discusses a composition of matter, that
22 the claims fall within the classification of
23 inventions patentable under the statute?

24 MS. PETERSON: Objection to form.

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1 Ambiguous. Calls for an answer outside of the
2 testimony and opinions that he's providing in
3 this case.

4 MR. ALTMAN: Liane, that's a speaking
5 objection. There's no speaking objections.

6 A So I'm not a lawyer, but as I read the claims,
7 and in view of a personal skill in the art, I
8 inform my opinions related to all of the
9 different sections in my invalidity.

10 Q So you wouldn't know?

11 A I have not really looked at the specific --

12 Q Well, you're looking at it right now. I mean,
13 what is your -- it gives a group of
14 classifications of things, of types of things
15 that are patentable, okay. And it says a
16 process, a machine, a manufacturer or composition
17 of matter, or any new and useful improvement
18 thereof. Is this claim one concern a process or
19 a method?

20 A It's a method, but it is a method of
21 electrostatically inhibiting --

22 Q I'm not -- that's not what I'm asking. That's
23 not responsive. I was very specific. Does it
24 cover a process, a method?

Page 36

1 A The claim covers a method, but the method of
2 electrostatically attracting or inhibiting --

3 Q We'll get to that afterwards. But it --

4 MS. PETERSON: Counsel, can you please
5 let the witness finish his question -- or finish
6 his answer.

7 MR. ALTMAN: Why don't you ask it again
8 so we have a clean --

9 MR. KREMEN: Okay.

10 Q Is claim one a method or a process, yes or no?

11 A Yes, it is a method, a claim.

12 Q Okay. And is claim two a composition of matter?

13 A Claim two is a formulation.

14 Q Which is a composition of matter, yes?

15 A Yes.

16 Q So just in terms of the category of things that
17 are patentable, that are inventions patentable,
18 those two claims fall within that category, am I
19 right?

20 MS. PETERSON: Objection to form.

21 A Again, just looking at the term method or
22 formulation, they fall, but once you read the
23 entirety of the claim it doesn't.

24 MR. KREMEN: Objection.

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1 MS. PETERSON: Mr. Kremen, again,
2 please let the witness finish his answer. If you
3 have an objection to his question, that's fine,
4 but wait until his answer is complete rather than
5 cutting him off.

6 MR. KREMEN: Objection. The answer is
7 non-responsive after the word but.

8 Q Now, in paragraph 202, you allege that the claims
9 of the 802 patent are directed to laws of nature
10 or natural phenomenon, yes?

11 MS. PETERSON: Objection.

12 Mischaracterizes --

13 MR. ALTMAN: That's a speaking
14 objection, Liane. It's objection form.

15 MS. PETERSON: It's a concise statement
16 of the objection.

17 MR. ALTMAN: No, it's not. That's a
18 speaking objection.

19 A Are you asking about paragraph two of Exhibit 4?

20 Q Yes.

21 A Yes, that's what I'm -- that's my opinion in
22 paragraph 202.

23 Q Okay. Because of this subject matter, it's your
24 opinion that the subject matter of the claims are

Page 38

1 patent ineligible; am I right?

2 A That's correct.

3 Q Okay. And that law of nature is electrostatic
4 traction and repulsion, yes?

5 A Yes.

6 Q Isn't it true that all inventions, patentable or
7 not, utilize laws of nature?

8 MS. PETERSON: Objection to form.

9 A My understanding is that for subject matter to be
10 patentable, there has to be some novelty beyond
11 what is well known to personal skill in the art
12 as occurring by nature.

13 Q That's non-responsive. Can you think of a patent
14 that does not involve somehow a law of nature?

15 MS. PETERSON: Objection to form.

16 A Again, there has to be something on top of just
17 attracting electrostatically to be able to be
18 patentable to be novel.

19 Q All right. Let's try to get some examples here.
20 Would you say that centrifugal force is a law of
21 nature?

22 A It depends on --

23 Q Natural phenomena -- just the abstract.

24 A Then you have to induce centrifugal force. It's

Page 39

1 not something that occurs just by itself.

2 Q Okay. So a centrifuge, which uses centrifugal
3 force would be patentable, right?

4 MS. PETERSON: Objection to form.

5 A Again, it's an instrument that creates that
6 centrifugal force. Here you're relying simply on
7 having negatively charged particle come to a
8 positively charged surface.

9 Q Okay.

10 MR. KREMEN: Objection, non-responsive.

11 Q How about a tire, can a tire do its function
12 without gravity?

13 A Again, there are many other things that are
14 affected by gravity. Tire is just one of them.

15 Q Okay. But it can't function without gravity, a
16 tire won't move a car unless it was -- unless it
17 was utilizing the law of nature, which would be
18 gravity, right?

19 A No. Part of the function of the tire is that it
20 allows the automobile to be driven, and so the
21 engine of the automobile and all the other
22 elements in the car also affects the function of
23 the tire.

24 Q So does a tire require gravity in order to work?

Page 40

1 A Yes, it does.

2 Q Okay. Now, you would agree that merely because a
3 claim invention uses a law of nature, that does
4 not make it patent ineligible; am I correct?

5 A But there has to be something novel about it. In
6 this case, there is nothing novel beyond the fact
7 that there is electrostatic attraction.

8 MR. KREMEN: Non-responsive.

9 Q You would also agree that if a claim process
10 utilizes the law of nature and contains
11 additional steps, each of which uses a law of
12 nature, that the claim invention could be subject
13 matter eligible for patentability, yes?

14 MS. PETERSON: Objection to form.

15 A I haven't -- I looked at my analysis based on the
16 elements of the claims and the language of the
17 claim.

18 Q Would you agree that -- would you agree that if a
19 claims process uses a law of nature and contains
20 additional steps, each of which use a law of
21 nature, that the claim invention could be subject
22 matter eligible for patentability?

23 MS. PETERSON: Objection.

24 A Again, I have to look at the specifics of those

Page 41

1 claims to make my -- looking at the 802 patent
2 claim, my opinion is that --

3 Q I'm not speaking about the 802 patent. I'm
4 speaking in general, that if it uses a -- if a
5 claim uses a law of nature, and it contains other
6 steps that also use a law of nature, that that
7 could be patent eligible, just because it uses a
8 law of nature it's not necessarily ineligible?

9 MS. PETERSON: Objection.

10 A I have to look at those claims to be explicit. I
11 don't know -- sitting here, I don't know exactly
12 what you're talking about.

13 Q Now, in paragraph 202, you state that the claims
14 of the 802 patent utilize electrostatic
15 attraction or repulsion and that they have
16 additional steps or elements, yes?

17 A Yes. Those are the elements A, B, and C.

18 Q Okay. But you also say that each of those
19 additional claim elements are either conventional
20 steps that are well known to a person of ordinary
21 skill, or depend on the very same law of nature
22 or natural phenomenon. That's what you wrote,
23 yes?

24 A Yes.

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1 Q Okay. Now, isn't it true that a patent claim
2 having a unique combination of conventional steps
3 can still be patentable?

4 MS. PETERSON: Objection to form.

5 A Again, I have to look at the specifics of those
6 patents.

7 Q But if it has a unique combination of steps, can
8 -- I'm not asking you for a particular one. I'm
9 giving you a hypothetical, a general claim that
10 has a unique combination of steps, it can be
11 patentable, yes or no?

12 MS. PETERSON: Objection.

13 A I have to look at the specifics. I can't just
14 sit here and opine on something that's
15 hypothetical.

16 Q But is it possible for a patent to be issued on
17 something that has a unique combination of steps
18 for a method?

19 MS. PETERSON: Objection.

20 A It's certainly possible, but doesn't mean it's
21 valid.

22 Q Is it possible that a patent, a valid patent, can
23 be issued having a unique combination of steps,
24 hypothetically, not for the 802 patent, but

Page 43

1 hypothetically?

2 MS. PETERSON: Objection.

3 A Again, any hypothetical patent there's a lot of
4 possibilities out there. I don't know until I
5 see the specifics --

6 Q Have you ever written a method, a patent claim,
7 that was a method patent?

8 A I'm sure I have reviewed them. I haven't written
9 per se, but I've reviewed them.

10 Q None of your patents are method or process
11 patents; am I correct?

12 MS. PETERSON: Objection to form.

13 A I'm sure there are some other claims within the
14 patent that teach a person of skill towards
15 method. The majority of my patents are
16 composition of matter patents.

17 Q Do any of your patent claims rely on any natural
18 laws?

19 A I have to look back at those documents to give
20 you an honest opinion.

21 Q Okay. So we're saying that -- going back to my
22 previous question. So each of the, in paragraph
23 202, you state that the claims of the 802 patent
24 utilize electrostatic attraction repulsion and

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1 that they have additional steps or elements, yes?

2 A Yes, they do.

3 Q In addition to that, you mentioned that the steps
4 are either conventional steps or those known to
5 purchase skills of the art, yes?

6 A Yes.

7 Q What does the -- you indicated that the claims,
8 1, 2, 6 and 7, are invalid for being directed to
9 ineligible subject matter on the 35 USC 101. Is
10 the knowledge of a person of ordinary skill
11 relevant to the matter of subject matter
12 eligibility under Section 101?

13 MS. PETERSON: Objection.

14 A Yes, I believe it is because it's in the analysis
15 of invalidity for all of the different aspects.
16 You have to consider that under the -- from the
17 person of skill in the art and also from the time
18 of the invention based on the priority date.

19 Q But under 101, under Section 101 which you've
20 opined on, do you know that the knowledge of a
21 person of ordinary skill is somehow in there?

22 MS. PETERSON: Objection.

23 A Again, in my analysis, you know, I considered all
24 of the different opinions that I provided based

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on the person of skill in the art.

2 Q Even those under Section 101?

3 A All of the opinions that I provided in my expert
4 report.

5 Q Okay. Turn to page 19.

6 A Same exhibit?

7 Q Yes, please. Would you read paragraph 44 aloud?

8 A Paragraph 44 states that, "I understand that a
9 patent claim is invalid if the specification does
10 not provide any data or other information
11 demonstrating a substantial likelihood that the
12 invention will work as described and claimed."

13 Q What is the basis of that understanding?

14 A Well, if you look at the patent itself, there is
15 nothing in the patent that suggests that there's
16 any demonstration of the fact that the
17 compositions would actually work the way they are
18 claimed.

19 Q Can you point to any place in the statute or the
20 rules where this is written specifically?

MS. PETERSON: Objection.

22 A Well, again, as I said, I'm applying the
23 understanding of credible utility analysis in
24 terms of the statements that I'm making on page

Page 46

1 19, paragraph 44, that for a person of skill to
2 be able to -- or having a patent claim that are
3 valid, there has to be demonstration in the
4 patent of likelihood of an invention.

5 Q What is the basis of that statement?

6 A Well, there has to be sufficient disclosure in
7 the patent to a person of skill in the art that
8 this is inventive, it is an invention --

9 Q And that's under Section 101?

10 MS. PETERSON: Objection.

11 A Again, this is based on -- the credible utility
12 analysis is based on Section 101 and I'm applying
13 it specifically to the teachings of the 802
14 patent.

15 Q Okay. So now turn to page 99.

16 A I'm there.

17 Q In paragraph 212, you state that claims 1, 2, 6
18 and 7 are invalid for lack of credible utility,
19 yes?

20 A Yes.

21 Q Now, you have a copy of, I think it was P8, was
22 it, which is 35 USC 101?

23 A Yes.

24 Q Isn't it true from reading that, that Section 101

Page 47

1 requires that an invention must be new and
2 useful? Take a look at Exhibit 8.

3 A Yes. It says new and useful process and machine
4 manufacturer --

That the invention needs to be new and useful.

6 MS. PETERSON: Objection.

7 Q Isn't it true that a formulation that actually
8 inhibits infection due to inhalation of harmful
9 particles is useful?

10 MS. PETERSON: Objection.

11 A That formulation if it was actually --

12 Q No, but --

13 A -- the teaching of the 802 would be useful but
14 it's not.

15 Q Okay. Now, in paragraph 214 you complain that
16 there's no credible utility for claims 1, 2, 6,
17 or 7 under 35 USC Section 112 because the 802
18 patent "Does not include any data or test results
19 for any of the formulations described" to
20 demonstrate that they will work as claimed.

Isn't it true that no statute or rule specifically required such data or test results for patentability?

24 MS. PETERSON: Objection. Misstates

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the work.

2 A My opinion is that the 802 patent doesn't teach
3 to a personal skill in the art specific
4 composition that enables the claim.

5 MR. KREMEN: Objection, non-responsive.

6 Q You said that you're familiar with the patent
7 prosecution. Now, in terms of patent
8 prosecution, you have to comply with certain
9 rules, certain statutes. Is there any kind of
10 rule that you are familiar with that specifically
11 requires that such data or test results to be
12 present?

13 MS. PETERSON: Objection, form.

14 A Well, the patent -- in the totality of the patent
15 it has to teach a person or skill that when you
16 are claiming certain elements, those elements are
17 actually going to be met by the specification of
18 the patent.

19 Q Okay.

20 A 802 does not.

21 MR. KREMEN: Can I have a copy of 112.

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1 Q This is Exhibit 9.

2 MS. PETERSON: Stan, is this even --
3 actually, I object to Exhibit 12 (sic). This
4 isn't even the proper version of the statute.

5 MR. KREMEN: No. I'm going to just
6 tell what it really is. All I did was I -- this
7 is not the entire 112. This is just Sections A
8 and B.

9 MS. PETERSON: Yes, but it's from the
10 wrong version. This version of the statute
11 doesn't apply to the patent at issue in this
12 case.

13 MR. KREMEN: Okay. All right.

14 Q Are you familiar with the written description
15 requirement of 112? Because you quoted 112 here,
16 are you familiar with the written description
17 requirement?

18 A Yes, I am.

19 Q Isn't it true that the written description
20 requirement of Section 112A only requires that a
21 person of ordinary skill in the art will be able
22 to make and use the invention?

23 MS. PETERSON: Objection.

24 A As I stated in paragraph 46 of my expert report,

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1 the written description requirement, objectively
2 demonstrate a person of skill in the art that the
3 patent applicant actually invented or possessed
4 the full scope of the claim.

5 Q That's the written description requirement,
6 according to you?

7 A That's the -- based on my understanding of the
8 written description requirement is that it
9 requires that the applicant possessed, or had in
10 possession, based on the full scope of the claim.

11 Q Isn't it true that the enablement requirement of
12 112 applies only to the written description and
13 not to the claims?

14 MS. PETERSON: Objection.

15 A No. The enable requirement also would be applied
16 too based on the fact that undue experimentation
17 was necessary by a person of skill in the art to
18 enable the claim -- the full scope of the claim.

19 Q But it's the written description that it pertains
20 to, not to the claims.

21 MS. PETERSON: Objection, ambiguous.

22 A Well, I review the patent claims and then I
23 review the specification in my analysis to see
24 where I can find support in the patent for both

written description and enablement.

2 Q Have you ever read 35 USC 112?

3 A I'm familiar with it. That's the code or section
4 112 is what I'm applying for all of the analysis
5 that I've done for invalidity.

6 Q So you're applying to the first paragraph in 112
7 as far as -- because the second paragraph of 112
8 says nothing about person of skills of the art
9 being able to make them and use the invention.
0 It's only in the first paragraph.

11 MS. PETERSON: Objection.

12 A Well, I'm applying based on my understanding and
13 what I've been provided by counsel in terms of
14 the standards, I'm applying those standards in my
15 analysis.

16 Q Do you have a copy of the standards that you've
17 been provided by counsel?

18 A I have provided that information in my expert
19 report.

20 Q When counsel gave it to you, how was it
21 communicated?

22 A We discussed the standards, and then
23 subsequently, I applied those standards in my
24 analysis.

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1 Q It was verbal?

2 A I'm not sure exactly, you know, the specifics of
3 the transmission. Initially, it was verbal
4 discussion and then, of course, it came in the
5 report.

6 Q So were you given a document with the standard?

7 A No, I have not seen the document. I discussed
8 the standards and I certainly opined on many
9 other cases as specifically related to both the
10 obviousness and non-obviousness analysis as well
11 as the 112 written description enablement and
12 definite analysis.

13 Q So you don't know at this point, am I correct,
14 that you don't know whether section 112 requires
15 that test results that would demonstrate to a
16 person skilled in the art that there's a
17 substantial likelihood that the claim will
18 eventually work, at this point you don't know
19 whether 112 provides that; am I correct?

20 MS. PETERSON: Objection.

21 A Well, what I know is that for written
22 description, the applicants of the patent should
23 have sufficient disclosure, sufficient
24 description in the patent, to inform a person or

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1 skill that they were in possession of the full
2 scope.

3 Q Okay. But does that demand testing?

4 MS. PETERSON: Objection.

5 A Well, it demands the fact that there's enough
6 description in the patent, enough disclosure,
7 that the person of skill can understand that the
8 patentee possess the full scope.

9 Q That's not what I asked. Does it require
10 testing?

11 MS. PETERSON: Objection.

12 A Again, I'm not saying that there has to be a
13 specific testing, but what I'm saying is that
14 there has to be sufficient disclosure in the
15 patent for a person of skill to know that the
16 patentee had full scope -- had possessed the full
17 scope of the claims.

18 Q Okay. Regarding patent claiming invalidity, do
19 you understand the difference between claim
20 anticipation on the 35 USC Section 102 and
21 obviousness under Section 103?

22 MS. PETERSON: Objection.

23 A I understand the differences between based on the
24 analysis that I've done in this case related to

Page 54

1 the 802 patent.

2 Q So you do understand the difference between
3 anticipation and obviousness then?

4 MS. PETERSON: Objection.

5 A Again, in the context of when I'm looking at it
6 as a technical expert.

7 Q Now, wouldn't you agree that for a claim to be
8 anticipated, a single prior art reference must
9 encompass every element in that claim?

10 MS. PETERSON: Objection.

11 A Yes. That's the standards that you apply for
12 anticipation.

13 Q Wouldn't you also agree that for a claim to be
14 obvious over prior art, in Section 103, a
15 combination of prior art references must be used
16 to encompass every element of the claim?

17 MS. PETERSON: Objection.

18 A That's my understanding. And again, for
19 obviousness analysis, the prior art can be
20 combined in order to then come to all the
21 elements of the claim.

22 Q So the combination must produce all the elements
23 of the claim?

24 MS. PETERSON: Objection.

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1 A Must provide evidence to a person of skill in the
2 art with reasonable expectation of success.

3 Q And that is a difference between anticipation
4 requiring a single reference that's going to do
5 everything and a combination of references, which
6 in other words, anticipation is all done with one
7 -- am I correct in terms of your understanding
8 that anticipation requires only once a single
9 reference and obviousness requires a combination
10 of references; is that your understanding?

11 A That's generally where -- and that's the analysis
12 that I've done, that for a claim to be invalid,
13 it is anticipated by a single item of prior art.

14 Q Okay. So you would agree that if a single prior
15 art reference does not encompass every element of
16 the claim, that claim cannot be invalid over that
17 single prior art reference alone; am I correct?

18 MS. PETERSON: Objection.

19 A Only under the anticipation argument, but it can
20 certainly be invalid based on the obviousness
21 argument.

22 Q How?

23 MS. PETERSON: Objection.

24 A Again, if that prior art is combined with other

Page 56

1 prior art in order to arrive --

2 Q But -- okay. You just previously said that in
3 order to anticipate something, you have to have a
4 single reference that encompasses all the
5 elements of the claim. If it doesn't encompass
6 all of the elements of the claim, can it be used
7 alone to invalidate the claim?

8 MS. PETERSON: Objection.

9 A Again, if it is single prior art document, and
10 the argument is only anticipation, it cannot, but
11 if that single document is combined with other
12 documents, then certainly claims could be
13 obvious.

14 Q But it's not combined with other documents, and
15 it doesn't encompass all the elements of the
16 claim, can it be used alone without any
17 combination, can it be used alone just to
18 invalidate a patent?

19 MS. PETERSON: Objection.

20 A Not alone. If it doesn't meet all the claim
21 elements, it has to --

22 Q Okay.

23 A You have to have all the claim elements met.

24 Q Good, okay. That's -- I just wanted to

1 understand what you were looking at.

2 Now, isn't it true, that if for some
3 reason it's impossible to combine two or more
4 references, the combination of those references
5 cannot render a claim invalid?

6 MS. PETERSON: Objection.

7 A I'm not sure what that means to not be able to
8 combine.

9 Q Well, there are certain things that can't be
10 combined no matter what you're doing. Well, let
11 me ask you, hypothetically, if a claim has
12 elements A and B, and you have one reference that
13 has A and the second reference that has B, is it
14 always possible to combine the two references to
15 produce the claim?

16 MS. PETERSON: Objection.

17 A Again, from a person of skill in the art
18 reviewing the patent, the analysis that is done
19 in these types of cases is I would look at the
20 expectation of success.

21 Q I don't understand. Could you clarify that,
22 please?

23 A So in order to understand the analysis, I would
24 basically look at the claim language in my case

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1 and for the 802 patent, look at the specification
2 and what the specification teaches, and then see
3 if back in the priority date, what was the
4 general knowledge in the field and what was the
5 available references that teach towards what the
6 person of skill would know.

7 Q Isn't a true that you have to have specific
8 references to be able to invalidate a patent
9 under 102 and 103, which is the prior art
10 statutes?

11 MS. PETERSON: Objection to form.

12 Q I'm sorry, I'll rephrase. Isn't it true that for
13 anticipation or obviousness, you must have
14 specific references, specific prior art
15 references, to be able to invalidate it?

16 MS. PETERSON: Objection.

17 A Yes.

18 MS. PETERSON: Stan, we've been going
19 like an hour, over an hour.

20 MR. KREMEN: Do you want to take a
21 break? Okay.

22 (Brief Recess)

23 BY MR. KREMEN:

24 Q Now, isn't it true that if a prior art reference

1 is not enabled, it can't be used to anticipate a
2 claim?

3 MS. PETERSON: Objection.

4 A I'm not sure I understand the question. The
5 prior art reference itself is not enabled?

6 Q Right. In other words, not necessarily an issue
7 patent is anything. If the prior art reference
8 is not enabled, you can't figure out how to make
9 it, use it, or whatever, if it's not enabled, it
10 can't be used as a reference to anticipate a
11 claim?

12 MS. PETERSON: Objection.

13 A Again, when I reviewed all the prior art that
14 I've relied on for my opinions in this case, I
15 found the inventions to be enabled.

16 Q Okay. So you actually found all of the prior art
17 in this case that you use to be enabled, correct?

18 A Based on my understanding of the enablement
19 standards that have applied in this case.

20 Q So in other words, on each of the prior art
21 references that you looked at, that a person of
22 ordinary skill in the art would be able to make
23 and use that invention; is that correct?

24 MS. PETERSON: Objection.

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1 A Again, based on what I've looked at as far as my
2 obviousness analysis of the 802 patent claims, in
3 the review of the prior art documents that I've
4 relied on in order to tell a person of skill in
5 the art what the claims of the 802 patent are
6 specifically addressing, I found those documents
7 to be valid.

8 Q Was any prior art given to you by counsel or did
9 you find it all on your own?

10 A I believe we discussed, and maybe the documents
11 were provided, I didn't go out and search
12 specific documents, but I did discuss with
13 counsel the specific matter itself that are
14 taught on this prior art, and obviously the
15 opinions that I'm providing are all mine.

16 Q So did you find any of the prior art on your own?

17 A I may have. For example, the Wahi 488 and 481, I
18 may have seen them before.

19 Q What about Wadstrom?

20 A Wadstrom, also I've seen them before.

21 Q And Rolf?

22 A Yes.

23 Q And where did you see those before?

24 A I saw it as an expert on a prior matter between

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1 Trutek and Matrix.

2 Q Did counsel give you any of those references, the
3 prior art references?

4 MS. PETERSON: Objection.

5 A The documents itself, maybe, you know, maybe
6 provided by counsel through an email, but all the
7 opinions that I'm providing are mine. I reviewed
8 those prior art myself.

9 Q But the documents would have been provided to you
10 by counsel?

11 MS. PETERSON: Objection.

12 A Yes, some of the documents, certainly. I didn't
13 go out and search for every one of them.

14 Q Did you run any search yourself for prior art?

15 A I don't recall searching specifically, but I do
16 recall looking at the documents and looking at
17 data to patent and being able to do the analysis.
18 The analysis is all mine and the opinions are all
19 mine.

20 Q Now, you've expressed some of these opinions
21 before in another case; am I correct?

22 A Sorry. Which other case?

23 Q (Indiscernible) case.

24 A Yes.

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1 Q Did you use some of the same prior art in this
2 case as you used in the Matrix case?

3 A Some of them, yes, but they're also few
4 additional ones that are here. For example,
5 Baker patents, as well as Rabe, Katz, those were
6 not -- we did not use that in the Matrix case.

7 Q Did you find those yourself or did counsel
8 provide them to you?

9 A No. Again, based on the information that -- the
10 documents were provided, but I reviewed the
11 documents myself and opinions that I provide in
12 my report are all mine.

13 Q Did you search for any of those yourself?

14 A No, I did not search for them myself.

15 Q In terms of the Baker patents -- well, first of
16 all, in terms of the other patents, the Wadstrom
17 patent, Rolf, and the ones you used in the Matrix
18 case, did you search for them yourself or were
19 they given to you?

20 A For this case or the Matrix?

21 Q The other case.

22 A Again, I think that we, you know, for that
23 counsel and I had discussions and some of those
24 documents were provided to me.

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1 Q Okay. And the Baker patents were provided to you
2 in this case during the discussion with counsel?

3 MS. PETERSON: Objection.

4 A Yes. Again, I didn't go out and actually download
5 the files.

6 Q Okay. Did you know about them beforehand, the
7 Baker patents?

8 A Yes.

9 Q You knew about the Baker patents, how did you
10 know about them?

11 A So I am familiar with the Nano motion technology
12 based on the fact that Dr. Baker was a professor
13 at University of Michigan and he and I, we were
14 part of the Alliance for Nano technology in
15 cancer.

16 Q That's very interesting. My compliments on that.
17 Okay. Now, you also generated a report. Let's
18 see, this is Exhibit Number 6, which is a
19 Responsive Report of Mansoor M. Amiji, Ph.D. on
20 Non-Infringement. You also generated this report
21 with your opinions at BlueWillow NanoBio Protect
22 product does not infringe the claims of the 802
23 patent; is that correct?

24 A Yes, it does.

1 Q Okay. Does this report contains all of your
2 opinions supporting BlueWillow's allegations that
3 its NanoBio Protect products do not infringe the
4 claims of the 802 patent?

5 A It has all the opinions as of today, but as I
6 said before, if there's anything new that the
7 plaintiff's experts are able to provide, then
8 I'll need to submit another report or we'll have
9 rebuttal opinions.

10 Q As of today, from what I understand, all of the
11 reports had been submitted because there was a
12 deadline of September 29th. As of today, all of
13 the opinions that are rebutting any of the
14 reports or anything, you completely put your
15 opinions in all of your reports; am I correct?

16 MS. PETERSON: Objection.

17 A Yes, as of today.

18 Q As of today, okay. Now, on pages 14 through 18
19 of this report, you criticize the testing of
20 electrostatic charge by Dr. Alexei Ermakov and
21 Shane Burns as long as Dr. Lemmo's -- and also
22 Dr. Lemmo's reliance on these reports; is that
23 true?

24 A Yes, I do.

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1 Q Paragraph 39 of page 15, you wrote, "A person of
2 ordinary skill in the art reviewing the Ermakov
3 and Burns testing would not understand the test
4 results to establish that NanoBio Protect
5 satisfies the claim limitations and/or infringes
6 the asserted claims of the 802 patent."

7 You wrote that, yes?

8 A Yes, I did.

9 Q Could you explain that, please?

10 A Well, first of all, the tests that both
11 Dr. Ermakov and Mr. Burns did are not described
12 in the patent. Second, these tests do not
13 provide any evidence as to the fact that the
14 NanoBio Protect product satisfies all of the
15 claim limitations.

16 Q Specifically, what is your objection -- what did
17 Dr. Ermakov and Mr. Burns testing show?

18 MS. PETERSON: Objection.

19 A I'm not even sure what they -- it's a test. Both
20 of them just concocted a test.

21 Q Did you understand their test methodology?

22 MS. PETERSON: Objection.

23 A I understand what they did, but I don't
24 understand how -- whatever data that they

1 obtained could be applied to the claims of data
2 to --

3 Q What did they do?

4 A Well, Dr. Ermakov took a piece of paper and
5 sprayed the composition and then measured
6 conductivity.

7 A That is your understanding of what he did?

8 MS. PETERSON: Objection.

9 A That is what's in his report.

10 Q What did Mr. Burns do?

11 A Well, Mr. Burns took a dry piece of pigskin and
12 again, sprayed some compositions and measured
13 conductivity.

14 Q How did he measure that?

15 A He used a Faraday cup.

16 Q What does a Faraday cup measure?

17 A Again, it basically allows you to pass current
18 through a material and see if the current can
19 pass through and use an equation to come up with
20 some charge value.

21 Q And what is that equation?

22 A It's in his report. I mean --

23 Q Are you familiar with the general technology?

24 A I'm familiar with what they did, but it's nothing

1 to do with the teaching of data too or --

2 Q That's not what --

3 A -- the infringement analysis.

4 Q That's not what I'm asking. I'm asking are you
5 familiar with the technology?

6 A I am familiar with what they did in terms of
7 measuring conductivity, yes.

8 Q How would you measure electrostatic charge on a
9 surface?

10 MS. PETERSON: Objection.

11 A Well, it depends on what type of surface. And
12 first of all, it has to be relevant to the
13 teaching of the patent in suit.

14 Q Pick a particular surface that you think is
15 relevant, how would you measure the electrostatic
16 charge?

17 MS. PETERSON: Objection.

18 A Well, you know, one way that we do in our lab is
19 what's called a zeta potential measurement, which
20 looks at the surface charge of a particle and
21 gives you actually millivolts of charge.

22 Q So essentially what you're doing is you're
23 measuring voltage in this particular case, not
24 number of coulombs; am I right?

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1 A We can measure specifically the charge on the
2 surface of a particle with the instrument that we
3 have. But again, it's contact specific. We are
4 looking at it in the form of a particle. Here,
5 you're talking about surfaces.

6 Q What is the cationic agent?

7 A A cationic agent would be one where it could
8 either be permanently charged, or it could be
9 charged depending on the pH of the solution, but
10 the charge will be positive.

11 Q Okay. So it's a chemical substance that exhibits
12 a positive charge; is that correct?

13 MS. PETERSON: Objection.

14 A Under different conditions, yes.

15 Q Well, what conditions would it not exhibit a
16 positive charge?

17 A Well, if the pH is such that the charge is
18 neutralized, or it's not in water.

19 Q Cationic agents have to be in water in order to
20 be effective, correct?

21 MS. PETERSON: Objection.

22 A They have to have some presence of moisture or
23 water around it to be able to exert the charge.

24 Q Isn't it true that benzalkonium chloride is a

1 cationic agent?

2 A Benzalkonium chloride is a cationic, yes.

3 Q NanoBio Protect contains benzalkonium chloride,
4 right?

5 A It has .13 percent of benzalkonium chloride, yes.

6 Q And you're aware that BlueWillow claims on its
7 website that NanoBio Protect exhibits an
8 electrostatic charge?

9 MS. PETERSON: Objection.

10 A Well, the website information is certainly not a
11 scientific, it's just a promotional material. It
12 does say on the website that their product has
13 electrostatic charge based on the benzalkonium
14 chloride.

15 Q So if BlueWillow claims that their product has an
16 electrostatic charge, do you doubt their claim?

17 MS. PETERSON: Objection.

18 A No, I'm not doubting the claim, but it's a
19 promotional material. It's not a scientific
20 publication. It's not peer reviewed.

21 Q But it is in fact true, isn't it, that it does
22 contain an electrostatic charge?

23 MS. PETERSON: Objection.

24 A Again, BlueWillow product, based on my

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1 understanding, is a nanoemulsion and the charge
2 is on the surface of the oil droplet.

3 Q So nano emulsions in themselves, whether they
4 contain benzalkonium chloride or not, are they
5 charged, the nano droplets?

6 MS. PETERSON: Objection.

7 A Again, it depends on how you make the
8 nanoemulsion.

9 Q What prevents the nano droplets from coalescing
10 into a single -- what keeps them as droplets?

11 A There a number of ways you can prevent the
12 aggregation or coalescence of the droplet. You
13 can prevent by what's called steric repulsion or
14 you can --

15 Q I didn't catch that.

16 A Steric repulsion.

17 Q Okay.

18 A Or you can prevent by electrostatic repulsion.

19 Q What is steric repulsion?

20 A In steric repulsion, you are putting on the
21 surface of the droplet specific types of material
22 that basically extend from the surface and keep
23 two droplets from aggregating or coming in short
24 distance of each other.

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1 Q Now, with the fact that nano droplets, or the
2 nanoemulsion, contains benzalkonium chloride,
3 this is electrostatic repulsion; am I right?

4 MS. PETERSON: Objection.

5 A Again, if the benzalkonium chloride is displayed
6 on the surface of the oil, then it will have
7 positive charge, the oil droplet will have
8 positive charge.

9 Q So the product would have a positive
10 electrostatic charge because of the benzalkonium
11 chloride; true?

12 A Again, if the oil droplet is made in such a way
13 that the benzalkonium chloride is exposed to the
14 surface, the nitrogen on that benzalkonium
15 chloride is accessible to water that surrounds
16 the oil, and subsequently, the pH and all the
17 other conditions as such, that the ammonium ion
18 is ionized.

19 Q Okay. Now, isn't it true that germs are
20 negatively charged?

21 MS. PETERSON: Objection.

22 A It depends on the germ.

23 Q Do you know of any that are positively charged?

24 A Again, it depends on, you know, specific

1 conditions in which some germs, I don't know, I
2 have to see which germs you are talking about.

3 Q Do you know of any germs, microorganisms, that
4 are positively charged, any of them?

5 A Well, they can acquire different types of charge
6 depending on the environment that they're in. If
7 you have a bacteria, for example, in solution of
8 water, you could certainly have some of the ions
9 from that solution absorbable under the bacteria.
10 I don't know what you know mean by natural
11 organisms.

12 Q All right. I'm going to give you a copy of this
13 page.

15 (Whereupon, NanoBio Droplet Document,
16 was marked as Exhibit No. 10.)

18 Q I want you to assume for argument's sake at this
19 point, that this is a page that was taken as a
20 copy of from the BlueWillow website. And if you
21 look at the very bottom of the page, you'll
22 notice it says <https://bluewillow.com/nanobio->
23 protect and then there's a date given of February
24 7, 2021 at 4:40 p.m. So I'd like you to assume

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1 that this was taken from the BlueWillow website,
2 that is a true copy.

3 A Okay.

4 Q Now, would you look at item number one at the top
5 of the page. First of all, let's start at the
6 beginning. Would you read the first paragraph on
7 that?

8 A The first paragraph of this Exhibit 10 says, "The
9 unique effectiveness of NanoBio Protects is
10 derived from BlueWillow's patented nano
11 technology. NanoBio Protect places the BZK
12 antiseptic on the surface of nano droplets, which
13 results in at least four key advantages."

14 Q Now, you realize that BZK is BlueWillow's
15 abbreviation for benzalkonium chloride; am I
16 correct? You know that?

17 A Yes.

18 Q Now, read the item number one.

19 A "The nano droplets are attracted to germs by
20 electro-kinetic charge and present the BZK in
21 such a way to enable killing of germs on
22 contact."

23 Q Now, would you call that electrostatic
24 attraction?

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1 MS. PETERSON: Objection.

2 A Well, they use the term electro-kinetic charge,
3 but the attraction is, at least based on this
4 document, suggests that the germs attracted by
5 electrostatic charge.

6 Q Now, read number two on that page.

7 A "The droplets persist on skin for four or more
8 hours, enabling long lasting effectiveness."

9 Q Now, what does that really mean?

10 MS. PETERSON: Objection.

11 A To say that if you apply this to the skin, these
12 droplets will stay there for four hours or more.

13 Q What form do they take?

14 A The droplets?

15 Q Yes, on the skin.

16 MS. PETERSON: Objection.

17 A I don't know. I haven't really tested any of
18 these products to know what form they take.

19 Q Well, any liquid, if a liquid sticks to your
20 skin, does it form a film on the skin?

21 MS. PETERSON: Objection to form.

22 A Well, in this case, it's a nanoemulsion that
23 they're spraying on the skin. So it could easily
24 remain as individual droplets assuming if those

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1 droplets are well stabilized.

2 Q But the individual droplets, if they're sticking
3 to the skin, it forms a film; doesn't it?

4 MS. PETERSON: Objection to form.

5 A Well, if the droplets are stabilized to remain as
6 individual droplets, then they will basically
7 spread on the skin as droplets.

8 Q Now, isn't it true that benzalkonium chloride is
9 also a biocide, right?

10 A It's a biocide, specifically at concentrations
11 and as long as high concentrations are used, it
12 can induce by acidic effects.

13 Q Okay. You see the drawings on the page, on
14 Exhibit 10. Could you read inside the box, could
15 you read what it says there?

16 A Sure. It says, "Droplets surround and kill germs
17 via membrane disruption."

18 Q Okay. How does it do that?

19 MS. PETERSON: Objection to form.

20 A Well, again, I don't know exactly -- I have not
21 analyzed any peer reviewed documents from NanoBio
22 Protect to know the nature, but from this
23 diagram, it suggests that the nanoemulsion
24 droplets are able to sequester around the germ.

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1 Q Okay. So they hold it in place, they hold inside
2 the droplets then?

3 MS. PETERSON: Objection to form.

4 A Again, I'm just looking at this diagram, and what
5 it's saying is that these nanoemulsion droplets
6 are sticking to the, assuming this is a bacteria
7 that they're sticking to.

8 Q What do you think the role of benzalkonium
9 chloride in terms of the ability to kill the
10 germs, what is the role of the benzalkonium
11 chloride?

12 A Well, again, it depends how benzalkonium chloride
13 is surface exposed on these droplets, then it
14 will interact with the membrane of the bacteria
15 or virus, whatever that germ is.

16 Q Did you review the NanoBio Protect product itself
17 when you formed an opinion of non-infringement?

18 MS. PETERSON: Objection to form.

19 A I reviewed whatever documents that I'm describing
20 in my expert reports, those are the documents I
21 have reviewed and specifically related to the
22 NanoBio Protect product.

23 Q What documents related to the NanoBio Protect did
24 you review, specifically to the NanoBio Protect?

1 A I looked at the one of the applications that
2 NanoBio Protect had. I looked at some of the
3 documents that are provided with the Trutek
4
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7 Q Is there anything on Exhibit 10 that is
8 inconsistent with your understanding of the
9 NanoBio Protect product?

10 MS. PETERSON: Objection to form.

11 A This is -- again, this document is obtained from
12 a website. It's not peer reviewed. I don't know
13 anything about the specifics of what they're
14 describing, for example, which type of germ, how
15 much of the emulsion is put on, you know, what
16 was the nature. This is merely a promotional
17 material.

18 Q But I specifically asked, is there anything on
19 this document that is inconsistent with your
20 understanding of the nature of NanoBio Protect?

21 MS. PETERSON: Objection to form.

22 A Well, again, the document is just obtained from
23 the website. It's promotional. From what is in
24 the document, what was described in the document,

1 I don't have any objections or specific concerns,
2 but again, this is not describing anything
3 related to the product itself, nor is it
4 describing how much is used or does of
5 benzalkonium chloride, et cetera.

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5 MS. PETERSON: Objection. And also,
6 just real quick before I forget, since we are
7 talking about confidential information now, I
8 would like to designate the transcript as outside
9 counsel eyes only.

10 MR. KREMEN: Just that portion of it.

11 MS. PETERSON: Well, for right now. I
12 don't know what else is going to come up. So for
13 right now, I'd like the transcript designated
14 accordingly.

15 MR. KREMEN: Well, we will object to
16 that because we need to show that to certain
17 people. So we object to that. But I agree to
18 the discussion as to the composition that we just
19 discussed could maintain -- be confidential, but
20 other than that, I object to it.

21 Q Let's turn to the report on non-infringement,
22 which is Exhibit 6. On pages 12 and 13, you
23 opine on the nature and qualifications of the
24 person having ordinary skill in the art.

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1 According to the applicable law, do you know what
2 such a person needs to be?

3 MS. PETERSON: Objection.

4 A You're asking specifically on Exhibit 6?

5 Q Yes. I mean, if you know.

6 A Yes. I'm familiar with the application of a
7 person of ordinary skill in the art, that person,
8 he or she, is based on the subject matter of the
9 patent. Would the person -- it would be a
10 hypothetical person who at the time of the
11 invention would be considered to have knowledge
12 and skills related to the art that's been taught
13 in that patent.

14 Q What is the difference between a person having
15 ordinary skill in the art and a person having
16 extraordinary skill in the art?

17 MS. PETERSON: Objection, vague.

18 A I'm not --

19 MR. KREMEN: No speaking objections.

20 MS. PETERSON: That's not a speaking
21 objection, Stan.

22 A I'm not familiar with some of the further detail.
23 What I've done is apply, based on my
24 understanding of a person of ordinary skill in

1 the art, he or she at the time of the invention,
2 based on the knowledge and skills that they would
3 have, their interpretation of the matter that
4 starting this patent and patent in suit. But I
5 don't know about the difference between ordinary
6 versus expert.

7 Q You do admit that there is a difference between
8 someone having ordinary skill in the art and
9 someone having extraordinary skill in the art?

10 MS. PETERSON: Objection.

11 A I've heard the term extraordinary skill in the
12 art, but I don't know the details of what that
13 means.

14 Q Would a person having extraordinary skill of the
15 art also be qualified as one having ordinary
16 skill?

17 MS. PETERSON: Objection.

18 A Again, I don't know what the definition is. I
19 applied -- my analysis is done based on my
20 knowledge of a person of ordinary skill in the
21 art.

22 Q Okay. Do you consider yourself a person or
23 ordinary skill or somebody with extraordinary
24 skill?

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1 MS. PETERSON: Objection to form.

2 A Based on my definition of a person of ordinary
3 skill in the art, and based on the priority date
4 of this patent, I would consider myself a person
5 of ordinary skill in the art.

6 Q You at this point are a person of ordinary skill?

7 MS. PETERSON: Objection.

8 A Based on the definition that I'm providing.

9 Q Okay. Regarding the inventions claims recited in
10 claims 1, 2, 6 and 7 of the 802 patent, in what
11 business or profession would a person of ordinary
12 skill be engaged?

13 MS. PETERSON: Objection to form.

14 A Well, the claims are directed towards the
15 pharmaceutical formulation and their ability to
16 electrostatically attract and inhibit or hold the
17 particle and then inactivate those particles in
18 such this would be a composition where it would
19 be a pharmaceutical formulator.

20 Q Pharmaceutical formulator, okay. Now, what would
21 be the tasks that such a person would be able to
22 perform?

23 MS. PETERSON: Objection, vague.

24 A Well, based on the claim and the limitations, so

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1 claim 1, as we discussed, is a method claim.
2 Claim 2 is a formulation claim. So the person
3 would be able to formulate a composition and
4 obviously then be able to test it to show that it
5 meets all of the claim limitation.

6 Q Is this person of ordinary skill typically an
7 inventor?

8 MS. PETERSON: Objection.

9 A It's a hypothetical person. I don't know if
10 inventor is considered to be a person of skill in
11 the art or not. I don't know that specifically.
12 But I know that from a perspective of analysis of
13 invalidity and specifically related to data to
14 claims I applied, the definition that I provide
15 on paragraph 35 of my expert report.

16 Q Okay. So you would agree that a person of
17 ordinary skill in the art is a person who
18 typically formulates chemical or pharmaceutical
19 compounds, right?

20 MS. PETERSON: Objection to form.

21 A No. What I'm saying specifically in the context
22 of the 802 patent and the claims, it's somebody
23 who formulates but also has the knowledge and
24 skills to be able to make sure that it meets the

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1 claim limitations, which go beyond just
2 formulation.

3 Q Now, on page one of your CV, it says that you're
4 a registered pharmacist. Can a registered
5 pharmacist formulate pharmaceutical compounds?

6 MS. PETERSON: Objection.

7 A Again, it depends on practice of that registered
8 pharmacist. Some pharmacists compound
9 prescriptions.

10 Q Would you know the nature of a cationic agent and
11 what it does?

12 MS. PETERSON: Objection to form.

13 A Again, it depends on the person's, not just
14 education, but also experience. If they've been
15 working in with cationic agents and are familiar,
16 then they might not.

17 Q Okay. Would he know the nature of biocide or
18 biocidic agents and what it does?

19 MS. PETERSON: Objection to form.

20 A Again, depends on, you know, what type of
21 qualification and experiences they have. If
22 they've worked with biocide and are familiar,
23 then they may know what the biocide does.

24 Q How about the same analysis of a thickener?

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1 A Again, depends on, you know, what practice. A
2 pharmacist working in a retail store, if they're
3 compounding, they may know what a thickener does.

4 Q What about a binder?

5 A Again, depends on what type of binder. If it's a
6 binder that's using tablets, for example, retail
7 pharmacists do not make tablets.

8 Q But they know what it is, they know what it does,
9 right?

10 MS. PETERSON: Objection.

11 A Yes. They're in school of pharmacy. We teach
12 them what a binder does.

13 Q What about a surfactant?

14 MS. PETERSON: Objection.

15 A Again, you know, pharmacists do learn about
16 surfactants too.

17 Q Would a registered pharmacist be considered a
18 person of extraordinary skill in the art or
19 ordinary skill in the art? Let me rephrase that.
20 Would a registered pharmacist considered to be a
21 person of extraordinary skill in the art?

22 MS. PETERSON: Objection to form.

23 A Again, as I just testified before, I don't know
24 the definition of an extraordinary skill in the

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1 art. My analysis in the context of invalidity of
2 the 802 patents are based on what I know as a
3 person of ordinary skill in the art.

4 Q So a registered pharmacist would be considered as
5 a person of ordinary skill in the art, right?

6 MS. PETERSON: Objection to form.

7 A Again, I define it -- I give a certain definition
8 of person or ordinary skill in the art as someone
9 with a master's degree in chemical engineering,
10 pharmaceutical sciences and years of experience
11 in pharmaceutical formulation.

12 Q Okay. How many years of experience should such a
13 person of ordinary skill have?

14 A It varies with the type of experience also. If
15 they are making formulations for topical use,
16 they may have a few years. But if they are
17 somebody who is involved in other practices, they
18 may need a little bit more experience.

19 Q So give me some sort of a figure of how many
20 years of experience you would consider a person
21 of ordinary skill in the art to have?

22 A Again, it depends on their expertise and what
23 they do in their regular lives. If they are
24 actually making topical products, then they may

1 have -- they don't need a lot of experience
2 because they have that level of skill and they
3 may even be trained in those level of skills --

4 Q Now, could experience -- is it possible that
5 experience could substitute for education? In
6 other words, if they don't have an advanced
7 degree, but have a lot of experience, would that
8 also be -- would a person of ordinary skill,
9 would that person also be a person of ordinary
10 skill?

11 MS. PETERSON: Objection to form.

12 A Not in my opinion because I see a person of
13 ordinary skill in the art having the foundation
14 knowledge and also being able to then evaluate if
15 the product is going to function the way it is
16 taught in the 802 patent. So to me, both
17 education and experience matter.

18 Q Supposing that somebody who never went to high
19 school or college, but has been working in the
20 field for let's say 30 years, would that person
21 be, as a formulator, would that person be a
22 person with ordinary skill?

23 MS. PETERSON: Objection.

24 A In my opinion, that person, if they're given a

1 recipe, they can certainly make products. But
2 what they won't know is different ingredients
3 perform differently, what is the right
4 composition to make, how would this composition
5 actually work both as a safe and effective
6 product.

7 Q What if they've already done something like?

8 MS. PETERSON: Objection.

9 A Yeah, I mean, again, these are all hypotheticals.
10 You know, individual experience and individual
11 qualifications would certainly be what I would
12 review, But in the context of the analysis that I
13 have done, you know, I define a person of
14 ordinary skill as having these qualifications and
15 experiences.

16 Q Okay. Now, one of the things you mentioned is
17 that the person should have a degree in chemical
18 engineering, right?

19 MS. PETERSON: Objection.

20 Q Like a master's degree in chemical engineering.
21 That's in your report, right?

22 A Yes.

23 Q That was your opinion. What specifically in
24 chemical engineering curriculum is necessary,

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1 what qualifications would be necessary for such a
2 person to have?

3 MS. PETERSON: Objection.

4 A In the context of the 802 patent, specifically,
5 and the claims, a person with a chemical
6 engineering would understand, for example, the
7 issues of rheology. When you're developing a
8 formula, how thick or thin that formulation
9 should be, how can it be applied. They will also
10 have a good understanding of compatibility
11 between various types of chemicals that are mixed
12 together. Many of the chemical engineering
13 students, especially in schools like Northeastern
14 where I teach, are also interested in
15 understanding some of the pharmaceutical
16 applications. So they will also know that these
17 are not just products that are made, but they're
18 made for actual human beings.

19 Q What is the difference between someone who is a
20 chemical engineer and a chemist?

21 MS. PETERSON: Objection.

22 A One is an engineer. The other is a scientist.

23 Q Right, okay. But what is the difference in what
24 they do?

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1 MS. PETERSON: Objection.

2 A Again, engineers solve problems based on the
3 definition. The scientist would understand the
4 problem and then engineers come up with
5 solutions.

6 Q Doesn't a chemical engineer concern himself with
7 production aspects, how to make a product able to
8 be manufactured as opposed to someone who creates
9 a product from scratch?

10 MS. PETERSON: Objection.

11 A No. I think that's not true, not in my opinion.

12 Q Okay. Why do you say that a person who doesn't
13 have a master's degree in chemical engineering
14 cannot be a person of ordinary skill in the art?

15 A No. What I'm saying is it at least a master's
16 degree in chemical engineering or pharmaceutical
17 science or related fields. I'm not excluding
18 anyone. Q So you would be defining a person of,
19 when you say at least, a person of
20 ordinary skill in the art should have a
21 Ph.D. then?

22 MS. PETERSON: Objection.

23 A No. I say anyone with a master's degree, because
24 with master's degree they would have the

1 requisite knowledge of not just the formulation
2 and development, but actual characterization and
3 application that are a part of these claims I
4 interpret.

5 Q A person without that education would not have
6 the ability to do that kind of formulation; is
7 that correct?

8 A Well, somebody without having the knowledge of
9 what exact ingredients that are necessary as well
10 as being able to mix them in the right proportion
11 and in the right process, and to come up with a
12 composition that actually meets all of the claim
13 limitations, you need both education and
14 experience.

15 Q So would you say that a person of ordinary skill
16 would be able to do that?

17 MS. PETERSON: Objection.

18 A I applied, based on the definition that I'm
19 providing, I applied that particular definition
20 for a person of skill in view of the prior art in
21 terms of my analysis.

22 Q What about a person who has no education, no
23 formal education beyond a certain level, but has
24 been doing those kinds of things for 30 years,

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1 would that person qualify as a person of ordinary
2 skill?

3 MS. PETERSON: Objection.

4 A Not in my definition. But again, the plaintiff
5 definition is much more lower for person of skill
6 in the art, but my definition is they need the
7 education and they have to have experience
8 because the claims are not just making a product.
9 They're directed towards a product that
10 ultimately has certain features and will function
11 in the way that are taught in the claim.

12 Q What about being able to duplicate the examples
13 that are shown in the 802 patent?

14 A There are no examples in the 802 patent.

15 Q There are not?

16 A No.

17 Q Okay. We'll get to that afterwards. Talk about
18 the education, what type of courses would this
19 kind of person with ordinary skill have taken?

20 MS. PETERSON: Objection.

21 A Again, depends on which school they went to.
22 Some schools have -- different schools have
23 different courses that they offer their students.

24 Q What types of chemistry courses are necessary?

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1 MS. PETERSON: Objection.

2 A General organic chemistry. They may even take
3 biochemistry.

4 Q Are these courses ever offered on an
5 undergraduate level?

6 MS. PETERSON: Objection.

7 A A different levels.

8 Q Are they -- would they be offered on an
9 undergraduate level?

10 A At a much lower level, yes.

11 Q Would this person of ordinary skill have taken
12 physics courses?

13 A Again, depends on the school and their
14 curriculum.

15 Q How advanced would the physics courses need to
16 be?

17 MS. PETERSON: Objection.

18 A I can't speak to what courses are taught in which
19 school. It's a complete hypothetical.

20 Q Well, doesn't a first or second semester graduate
21 course -- first or second semester undergraduate
22 course in physics teach electrostatics --

23 MS. PETERSON: Objection.

24 Q -- that opposite charges attract and light

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1 charges repel?

2 A Yes. No, electrostatics are well known to
3 students, but this is not just about
4 electrostatic. The patent and the claims are
5 directed towards creating a composition that
6 ultimately inhibits infection. If you look at
7 the specification of the patent, it talks about
8 stopping anthrax.

9 Q Okay. What would you call a person who has not
10 the level of education that you indicated, but
11 that has been making those kinds of -- working on
12 that kind of formulation for 30 years, what would
13 you call that person? Would you call that person
14 of ordinary skill?

15 MS. PETERSON: Objection.

16 A Again, I don't know exactly what, you know, that
17 hypothetical person has done as far as education
18 or what type of field they're working on, what
19 experience they have. So until I see the
20 qualifications and experience, I can't really
21 tell. But what I'm opining on is a person of
22 skill based on the qualification and experiences
23 in my report.

24 Q All right. You do realize that a person of

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1 ordinary skill in the art is a hypothetical
2 person; don't you?

3 A Yes.

4 Q So we're dealing with a hypothetical person over
5 here, and you're telling me that you don't know
6 what characteristics that a hypothetical person
7 would have to have. In other words, whether it
8 would be experience or education. Can you have
9 experience without the education?

10 MS. PETERSON: Objection to form.

11 Asked and answered.

12 A Again, this is my definition that I'm applying in
13 my opinion. I think, you know, the plaintiffs
14 have made their definition. At one point, as we
15 move towards this litigation, the court will
16 decide which one to adopt.

17 Q What is your basis for making that decision, that
18 definition?

19 A Well, based on my review of the patent and what
20 the patent is teaching, I believe the patent is
21 not just teaching towards a composition. It's
22 teaching towards a utility, and this utility
23 involves applications to prevent infection. So a
24 person of skill has to have knowledge of what

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1 actually can prevent infection, like what can
2 stop anthrax, what can stop Coronavirus. That's
3 what the patent, the specification is teaching.

4 Q But if he has experience in working on that time
5 of rheology, does he does need -- and he has
6 experience of that, does he still need that level
7 of education?

8 MS. PETERSON: Objection.

9 A Again, they have to have some knowledge of both,
10 formulation, development, and application towards
11 all of the different facets that are taught in
12 the patent.

13 Q But suppose you have a person like that, who has
14 the experience with that, but not having the
15 education, would that person be a person of
16 ordinary skill?

17 A And this is my definition. This is the
18 definition that I'm opining on, and this is the
19 definition that I use in my analysis. You know,
20 if the court adopts a different definition, we
21 will address those issues then. But right now,
22 this is the definition I've applied.

23 Q Would a person of ordinary skill have taken
24 courses in biology?

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1 MS. PETERSON: Objection.

2 A Yes. For students who are doing master's,
3 certainly they have taken courses in biology,
4 both chemical engineering as well as
5 pharmaceutical sciences students.

6 Q What are the minimum requirements of biology
7 courses necessary for a person of ordinary skill
8 to have taken under this -- for this test?

9 MS. PETERSON: Objection.

10 MR. ALTMAN: Liane, what's the nature
11 of your objection?

12 MS. PETERSON: Oh, so now you want me
13 to say that?

14 MR. ALTMAN: When I want it, I'll ask
15 for it. So can you tell me what the nature of
16 the objection is?

17 MS. PETERSON: I think the question is
18 vague and ambiguous and I think it's an
19 incomplete hypothetical and I could keep going.

20 MR. ALTMAN: Okay.

21 A I'm sorry, can you repeat the question?

22 Q Okay. What are the minimum requirements of
23 biology courses necessary for a person of
24 ordinary skill to have under his belt?

1 MS. PETERSON: Objection.

2 A It varies with the curriculum of the school that
3 they go to. Typically, in a general biology one
4 and two is what students do take, both at the
5 bachelors level, and then if they come to the
6 master's program, they take some advanced biology
7 courses.

8 Q Now, a person who -- would a person who has your
9 level of education, but does not have the skill
10 of doing pharmaceutical formulation, would that
11 person also be a person of ordinary skill?

12 A No. My definition is that they will have several
13 years of experience. Once they have those
14 experiences, that's how they acquire a skill.

15 Q Now, when you say several, how many years?

16 A As I said, it depends on, you know, the
17 qualification. If somebody has a Ph.D, they may
18 not need many years, but if they have a master's
19 degree, they may need a little bit more.

20 Q Would they need ten years of experience?

21 A Again, this is a hypothetical person and what I'm
22 relying on in my analysis is the definition that
23 I'm providing here.

24 Q Would they need more than one year experience?

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1 A It depends on the individual and what they -- you
2 know, but I would say based on my analysis, I use
3 this definition of a person with a master's
4 degree in chemical engineering or pharmaceutical
5 science or related field and several years of
6 experience.

7 Q Okay. So it would be more than one year, right?

8 MS. PETERSON: Objection.

9 A Again, based on my definition.

10 Q Is that yes?

11 A It depends on the degree of, you know, if it's at
12 least a master's degree, but sometimes if they
13 have a Ph.D degree, then they may need a little
14 bit less.

15 Q But can it be less than one year, six months
16 maybe?

17 A Could be. Again, depends on the person. Again,
18 this is the definition that I've applied in my
19 analysis.

20 Q Could a person having a master's degree in
21 chemical engineering have no experience and still
22 be a person of ordinary skill?

23 MS. PETERSON: Objection.

24 A No. My definition says with several years. So

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1 based on the definition, they would have to have
2 some experience.

3 Q Would you agree that the more experience a person
4 has -- would you agree that the more relevant
5 experience a person has, the less education he
6 would need?

7 A Lesser than master's degree? I don't think so.

8 Q Okay. So in other words -- okay. It is your
9 testimony that a person who does not have a
10 master's degree in chemical engineering does not
11 possess the necessary skills to be a person of
12 ordinary skill in the art?

13 MS. PETERSON: Objection to form.

14 A No. As I said in my report, it's not just a
15 master's degree in chemical engineering, but also
16 pharmaceutical science or related fields. It's
17 not just excluding other disciplines.

18 Q Is it your testimony that a person who does not
19 have a master's degree in chemical engineering
20 cannot possess the same degree of knowledge as a
21 person who does have a master's degree in
22 chemical engineering?

23 MS. PETERSON: Objection to form.

24 A Again, my opinion is that the master's degree

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1 with the caliber of courses, as well as the fact
2 that master's comes after the bachelors, and
3 their experience in pharmaceutical formulation,
4 are what I would consider to be the
5 qualifications of a person of skill in the art.

6 Q So your answer would be no to that question; am I
7 right?

8 A I disagree with the characterization that
9 somebody with either a less degree, less than a
10 master's would really meet the level of
11 qualifications for a person of skill in the art.

12 Q Is it your testimony that a person who does not
13 have a master's degree cannot possess the same
14 level of knowledge as a person who has a master's
15 degree?

16 A No. I think that's not what I'm saying. What
17 I'm saying is that a person who when you're
18 looking at the art that is taught in the 802
19 patent, based on the 802 specifications and
20 claims, and looking at specifically the art, it
21 is my opinion that the person has to have at
22 least a master's degree in chemical engineering,
23 pharmaceutical science or related field and has
24 to have experience in pharmaceutical formulation.

1 Q That's a non-responsive answer. Is it your
2 testimony that a person who does not have a
3 master's degree in chemical engineering could not
4 have the same level of knowledge as a person who
5 has a master's degree in chemical engineering?

6 MS. PETERSON: Objection to form.

7 A No. Again, that's not what I'm answering. What
8 I'm saying is --

9 Q Can you answer the question that I've asked?

10 A Yes, I can answer the question, but my answer is
11 that -- I'm saying not just master's degree in
12 chemical engineering. It's master's degree in
13 chemical engineering, pharmaceutical sciences or
14 related field.

15 Q I'm not asking you whether he's a person of
16 ordinary skill in the art. I'm asking you
17 specifically, does a person -- is it your
18 testimony that a person who does not have a
19 master's degree in chemical engineering can have
20 the same level of knowledge as a person who has a
21 master's degree in chemical engineering? Forget
22 the 802 patent. Is it possible, or is it your
23 testimony, that a person who does not have the
24 degree in chemical engineering can have the same

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1 or possibly greater knowledge than a person who
2 has a master's degree in chemical engineering?

3 MS. PETERSON: Objection to form.

4 A Again, it's a hypothetical question. You know,
5 if somebody doesn't have a degree, but has more
6 experience, and in what area. Yes, they could
7 certainly have experience in certain area and
8 they will know how to do things in that area
9 based on their experience. But what I'm
10 reviewing is based on the context of the 802
11 patent.

12 Q But I want the answer to that particular
13 question. It's a non-responsive answer. I
14 specifically want the answer to the question. Is
15 it your testimony that a person who does not have
16 a degree in chemical engineering cannot have the
17 same level of knowledge as a person who has a
18 degree in chemical engineering?

19 MS. PETERSON: Objection to form.

20 A Again, I think I've answered that question at
21 least three times already. But it's context
22 dependent. It depends on what context you're
23 applying it to. A hypothetical person may have
24 more experiences than educational requirement,

1 but I'm looking at it in the context of --

2 Q Okay. So then basically, it is possible that a
3 person -- okay. Is a person who is an expert,
4 like yourself, one who is testifying as an
5 expert, a person of ordinary skill in the art?

6 MS. PETERSON: Objection to form.

7 A Based on the definition that I'm providing, yes.
8 I have at least a master's degree level education
9 in pharmaceutical sciences and I have many years
10 of experience.

11 Q That's for you. But any person who would be an
12 expert, who testifies as an expert, also be a
13 person who also has ordinary skill in the art?

14 MS. PETERSON: Objection to form.

15 A Again, it depends on what the expertise is and
16 what they are --

17 Q An expert in pharmaceutical formulation.

18 A Again, depends on their definition of a person of
19 ordinary skill in the art.

20 Q According to your definition?

21 A Are you saying any expert would be qualified as a
22 person of skill in the art?

23 Q Of ordinary skill if they're an expert, an expert
24 accepted by the court?

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1 MS. PETERSON: Objection to form.

2 A Again, I don't know what the court accepts or
3 doesn't accept. I know that based on my analysis,
4 I meet the definition of a person of skill in the
5 art.

6 Q Basically, I'm talking about knowledge now, just
7 about knowledge. Would you agree that a person
8 who does not possess a master's degree in
9 chemical engineering, could have the same or
10 possibly greater knowledge than a person who has
11 a master's degree in chemical engineering?

12 MS. PETERSON: Objection to form.

13 A Again, depends on what knowledge you're talking
14 about. Some knowledge can be acquired through
15 experiences. Others -- there's also the
16 foundational knowledge comes from education.

17 Q And that foundation of knowledge cannot be
18 garnered through experience, can only be garnered
19 through education?

20 A Again, depends. It's very subjective. It
21 depends on what experiences that person has gone
22 through.

23 MS. PETERSON: Stan, if you're at a
24 good stopping point for this, is it a good time

1 to take a break?

2 MR. KREMEN: Yes.

3 (Brief Recess)

4 BY MR. KREMEN:

5 Q The rest of this deposition is going to be
6 concerned with, I believe, your marksmen report,
7 which is Exhibit 7, and the 802 patent, which is
8 Exhibit 2. So that's what we're looking at.

9 Referring to your declaration marked
10 Mansoor M. Amiji, Ph.D is Support of blueWillow's
11 Claim Construction Brief as Exhibit 7. You
12 presented yourself as an expert in the field of
13 pharmaceutical sciences and drug formulation
14 development and characterization. Is this how
15 you're presenting expertise in this present
16 litigation?

17 A Yes. That's what I mentioned in the
18 qualification and experience that I'm an expert
19 in the field of pharmaceutical sciences, and drug
20 formulation development and characterization.

21 Q Okay. You further state that specifically, "I
22 specialize in drug formation development and
23 targeted delivery of therapeutics, and I have
24 been an expert in this field since prior to July

1 7, 2008."

2 Is that how you're presenting your
3 expertise in this present litigation?

4 A Yes.

5 Q Are there any writings submitted by you other
6 than the declaration in which express your
7 opinions on construction of the claims of the 802
8 patent?

9 MS. PETERSON: Objection to form.

10 A I'm not sure I understand the question.

11 Q Is this the only writing that you have submitted
12 to in this case stating your opinions on claim
13 construction, which is an Exhibit 7?

14 A Specifically in relation to claim construction?

15 Q Yes.

16 A Yes. This is the declaration, right.

17 Q Now, if you would turn to page 13. Would you
18 read the first sentence in paragraph 33? If you
19 can do that aloud, I would appreciate it.

20 A Page 13, paragraph 33?

21 Q Yes.

22 A "While a person skilled in the art reading the
23 802 patent would understand that the
24 specification provides a laundry list of possible

1 formulations, the patent specification does not
2 include any specific examples or test results for
3 any of the formulations demonstrating that they
4 work by electrostatically attracting particulate
5 matter to a thin film applied to the nasal
6 passages and holding the particulate matter in
7 place through adhesion to the thin film in order
8 to electrostatically inhibit such harmful
9 particulate matter from infecting an individual."

10 Q What do you mean by a laundry list?

11 A Well, the specification and the tables that are
12 provided in the patent lists all these different
13 ingredients.

14 Q Isn't it true that you're using the term laundry
15 list in an attempt to trivialize the ingredients
16 of the formulations described in the
17 specification?

18 MS. PETERSON: Objection to form.

19 A No. I'm just stating that the specification of
20 the 802 patent provides a list of ingredients.

21 Q A laundry list. It's trivializing it. It's
22 saying it's to be done with the wash.

23 MS. PETERSON: Objection to form.

24 A No. What I'm saying is, you know, the 802 patent

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1 is providing a list of ingredients and the tables
2 provide these ranges but there is no examples.

3 Q Okay. Why did you use the word laundry?

4 A Again, it's just a list of ingredients and
5 examples. That's what I usually refer to as a
6 laundry list.

7 Q Do you understand what an embodiment is with
8 respect to patents?

9 MS. PETERSON: Objection to form.

10 A I understand, generally, what an embodiment is,
11 but again, I don't know the exact legal
12 definition.

13 Q What do you understand it to be?

14 A Embodiment is one of the examples that the
15 patentee would be describing that, one or more
16 examples, that ultimately when it comes to
17 understanding the claims, that a person of skill
18 would relay that example towards the actual
19 nature of the claim language.

20 Q Is it true that patents list one or more
21 embodiments?

22 MS. PETERSON: Objection to form.

23 A It varies from patent to patent. Some patents
24 list embodiments. Other patents, like the 802

1 patent, doesn't have examples. It just simply
2 lists all these different tables with ranges.

3 Q We'll get into the 802 patent later. But doesn't
4 the patent have to at least list one embodiment?

5 A Again, I don't know the exact requirement, the
6 legal requirement of a patent, but I understand
7 the term embodiment to mean that it's a
8 composition or, you know, whatever the patent
9 claims are teaching towards there is some
10 language in there that supports that the patentee
11 had that particular composition or if there was a
12 method of use patent and they actually were able
13 to use that particular approach. And there's
14 sufficient description in the patent.

15 Q Isn't it a fact that there is no statutory
16 requirement that patents must include test data
17 or test results?

18 MS. PETERSON: Objection to form.

19 A Again, you know, for me, when I'm doing an
20 analysis, I'm simply looking at what the patent
21 you are providing. In my opinion, the patent
22 doesn't, in written description, an enablement
23 requirement, based on the fact that it doesn't --
24 the full scope of the claim is not met by what's

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1 in the patent.

2 Q So I take it that you don't know whether there is
3 a statutory requirement that a patent needs to
4 have test results or test data? Either you know
5 it or you don't know it.

6 A No. I do know that you don't need specific tests
7 and exact test results, but you do need to
8 convince a person of skill in the art that you
9 were able to make a composition that ultimately
10 met all the claim limitation.

11 Q Do you understand what a marksmen proceeding is?

12 A Yes.

13 Q What is it?

14 A It's a proceeding in the court where certain
15 claim terms, if there is any ambiguity in the
16 definition of the claim terms, the court is
17 provided with the claim terms analysis by both
18 the plaintiff side and defendant side, and then
19 the court decides exactly how to interpret the
20 claim terms.

21 Q And you're aware that it's a legal determination,
22 not a fact determination of the claim terms,
23 right?

24 A Again, I don't know exactly how the court

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1 determines the claim terms, but my understanding
2 is that that's what the marksmen hearing is,
3 provided declaration in support of marksmen.

4 Q It's a report, not a jury or a fact finding that
5 makes that determination; is that correct? You
6 understand that?

7 A That's been my experience so far. But I don't
8 know exactly what the legal requirement is.

9 Q Now, you would agree that the lack of test
10 specific examples, data or test results, has
11 nothing to do with the meaning of the claim term,
12 the actual meaning of the words?

13 A Well, for person of skill to understand the
14 meaning they have to see what the specification
15 is describing, and ultimately draw -- you know,
16 when you look at the actual claim language, you
17 don't find any support in the specification for
18 the 802 patent.

19 Q All right. One of the things which you mentioned
20 when we began the deposition, is you mentioned
21 the Phillips standard and you discuss that in
22 your report. I don't remember which one. That
23 the first page we look at it is the plain
24 language of the claim. I think that that was

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1 your opinion. I don't know if it was this report
2 or the other one.

3 MS. PETERSON: Is there somewhere where
4 you want to point him to?

5 MR. KREMEN: I don't remember. He did
6 testify to that.

7 A Yes. I've seen that specific language related to
8 the Phillips.

9 Q So for example, if we're going to use the plain
10 language of the claims, do you have to have test
11 results or test data to determine what the plain
12 language means?

13 MS. PETERSON: Objection to form.

14 A Again, in my opinion, and based on the
15 declaration that I provided for the claim
16 construction brief, the patent doesn't show to a
17 person of skill in the art, doesn't explicitly
18 describe any specific embodiment or any specific
19 examples that meets all the claim limitations.
20 That's what I'm opining on in my report.

21 Q But in terms of the claim, don't the words mean
22 what they mean in English? Forgetting -- the
23 Phillips standard said you start out with plain
24 language of the claims. Don't these words have

1 specific definitions, specific dictionary
2 definitions?

3 MS. PETERSON: Objection to form.

4 A If you just take the claim in isolation of the
5 specification, then those definitions are, you
6 know, what the plain language mean. But a person
7 of skill looks at the patent in total.

8 Q Okay, good. So in other words -- so basically,
9 you start out with the plain language, okay, and
10 you can modify the plain language by, in fact, I
11 believe that the rule says that a person can be
12 his own lexicographer, which means he can find
13 define terms differently than the plain language.
14 It starts out with the plain language, but he can
15 then define terms differently. You're aware of
16 that, right?

17 A Yes.

18 Q Among the things that you could define terms
19 differently is you can have a glossary, okay. Am
20 I right, you can do that? You can do that. You
21 can say I know that as long as the meaning of the
22 term is not repugnant, it's ordinary meaning, you
23 can say, when I use this term, it means that; you
24 can do that, right?

1 MS. PETERSON: Objection to form.

2 A Again, you know, that's maybe some, you know,
3 legal specific requirement. Again, as I
4 mentioned, I'm a technical expert, I don't know
5 the law related to --

6 Q But you've written patents before in which you,
7 I'm sure you defined terms in certain ways;
8 haven't you?

9 A As I've mentioned before in my testimony, I have
10 worked with lawyers who helped me with the draft
11 of the claims and we worked together on the
12 specifications.

13 Q Is a specification mostly written by you or is it
14 written by the attorneys?

15 A It's mixed. In some cases, some sections of the
16 specification I provide, especially if it's data
17 that we collected in the lab, and interpretation
18 of that data. Others the lawyers write.

19 Q So in the absence of a glossary, okay, we start
20 out with a plain meaning of the word in the
21 dictionary definition, and we take a look and see
22 if the specification or anything else within the
23 patent description changes the meaning in any
24 way; is that correct?

1 MS. PETERSON: Objection to form.

2 A I'm not an expert in this area of, you know, what
3 is the actual definition for the claim language.
4 What I'm doing is interpreting the claims in view
5 of the specification and providing my opinions in
6 my brief.

7 Q So essentially, you're interpreting the claims as
8 a technical expert, but not as a legal expert?

9 A Yes. My declaration is specifically relates to a
10 person of skill in the art and how they would
11 interpret the claims.

12 Q Yet, we know that in the marksmen hearing, the
13 definition of claim terms is a legal
14 determination. So doesn't some legal knowledge
15 -- isn't some legal knowledge required to be able
16 to interpret the claims?

17 MS. PETERSON: Objection to form.

18 A Again, whatever legal standards that I've
19 applied, I mention in my declaration. But what
20 I'm doing is to look at this in the context of a
21 person of skill in the art and my declaration is
22 in support of the construction brief from the
23 defendant's side.

24 Q Okay. So now the lack of test examples, or data,

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1 or test results, really has nothing to do with
2 the meaning of the words in the claim; am I
3 right?

4 A But a person of skill would be looking at the
5 claim and seeing what the claims is teaching and
6 then they will look at the specification to see
7 what support there is. There is no support any
8 of the elements of the claims in the
9 specification.

10 Q Let's look at some of this, okay. Have you ever
11 written any claims completely by yourself?

12 A No, I have not.

13 Q Okay. Look at paragraph 32 on the previous page.
14 You state that the 802 patent includes 10
15 separate tables, each with numerous formulations
16 and compounds that are variable.

17 A Yes, I see that.

18 Q By that, you mean that the percentage for each
19 ingredient is provided as a range of values; is
20 that correct?

21 A Well, that's what the 10 tables have. They have
22 ranges of values. They have, in many instances,
23 specific ingredients and then they also have
24 different number of ingredient. And then as you

1 looked at the claim, it's a comprising claim,
2 which means that it could also have other things
3 in there.

4 Q I'm specifically looking at the 10 tables right
5 now, okay. It's providing a percentage for each
6 ingredient as a range of values; is that correct?

7 A Yes, it is, and the ranges can go from anywhere.
8 A case of water, for example, can go from 62 to
9 80 percent.

10 Q That's what a range is. Now, would you agree
11 that ranges are permitted for ingredient
12 percentages?

13 MS. PETERSON: Objection to form.

14 A Permitted where?

15 Q In a patent specification. It doesn't have to be
16 an exact percentage; am I right?

17 A Well, of course, they are, but again, when you're
18 developing a composition based on that range, how
19 would that meet the claim limitation? How would
20 it electrostatically attract in particulate
21 matter? What level of electrostatic charge do
22 you need from all of those different ranges? How
23 would it hold? How long would it hold? What
24 kind of inactivation? What type of particle

1 would it inactivate? Would it inactivate the
2 same level in anthrax or would it inactivate a
3 coronavirus?

4 Q So isn't that a reason for it to be variable?

5 A No. That's not -- how would a person of skill
6 know from looking at these ranges which ones
7 would actually function the way the patent
8 claims?

9 Q You're claiming that a formulator, a
10 pharmaceutical formulator would not -- that you,
11 as a person of ordinary skill in the art, that
12 you would not be able to look at those examples
13 and develop a formulation using those ingredients
14 in the specific ranges, remember you can't go
15 beyond those ranges, developing those specific
16 ranges, to produce something that would have a
17 particular replication which is listed in the
18 patent? You would not know how to do that?

19 A No. Not only me, nobody else would know.
20 Because, again, it's all over the place. At the
21 end, you're looking at potentially applying to a
22 human being and saying oh, see if anthrax, you're
23 going to be stopped from getting infected by
24 anthrax.

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1 Q Doesn't that take experimentation? Wouldn't the
2 formulator do some experimentation to make that
3 determination?

4 A That's the definition of undue experimentation,
5 is how many experiments would you need to do with
6 all these ranges, and which one of these
7 ingredients would you put in, which ones you can
8 exclude. If it's a comprising claim, you could
9 even have more, and some of them may even
10 neutralize the charge.

11 Q So in other words, as long as the experimentation
12 is not undue, you could do some experimentation
13 with those ingredients, right?

14 MS. PETERSON: Objection to form.

15 A No. Again, this is just a table that lists these
16 ingredients and ranges without any guidance to a
17 person which of these ranges are actually going
18 to be functional, and which one will ultimately
19 lead to a product that meets the claim
20 limitation.

21 Q So in words, you're saying that you got to have
22 embodiments there with specific composition
23 percentages, right?

24 A No, that's not what I'm saying. I'm saying that

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1 even if you have these changes, at some point,
2 you have to inform a person of skill in the art
3 which product out of these ranges actually meet
4 the claim limitation. These are just ranges of
5 compositions without any guidance to a person of
6 skill that they will meet the claim limitation.

7 Q Okay. If the concentration of the ingredients
8 were specific as opposed to variable, would that
9 change the meaning of the claim term?

10 A It wouldn't meet the concentration of being
11 specific. The question is, you know, you still
12 have to then ask would that actually lead to a
13 thin film? Would it then meet all of the
14 different elements of the claim? Would it
15 electrostatically attract the particulate matter,
16 which particulate, and for how long? Would it
17 then hold the particulate matter? And then more
18 importantly, would it inactivate?

19 So, you have to have certain level of
20 description in there that supports these
21 compositions that says this is how we would
22 verify if we're meeting the claim limitations.

23 Q So you're saying that you cannot, so a patent
24 cannot have a claim that is broader than what you

1 disclose?

2 MS. PETERSON: Objection to form.

3 A A patent cannot have something that doesn't
4 really tell a person of skill in the art that
5 there is actually a composition there.

6 Q Okay. You would agree that the terms
7 electrostatically attracting the particle to the
8 thin film necessarily means that particulate
9 matter and thin film are oppositely charged, that
10 there's a force of attraction between them, yes?

11 A Again, it depends on what particle and what force
12 is necessary to create that attraction.

13 Q I'm saying that the plain meaning of the term,
14 electrostatically attracting particle matter to
15 the thin film, what is the plain language meaning
16 of that expression?

17 MS. PETERSON: Objection to form.

18 A Just means that there is some electrostatic
19 attraction between a particle and this thin film.

20 Q Okay. So you understand what the concept of
21 electrostatic attraction of particles with thin
22 film is; don't you?

23 A Right. But again, when I look at the
24 specification, it could be any particle. It

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1 doesn't even specifically one type of particle
2 and how that attraction occurs. You have a list
3 of different germs, different bacteria, viruses,
4 you know, different allergens.

5 Q So if we're taking about a formulation that has a
6 cationic agent in it of sufficient concentration,
7 and we talk about harmful particles that are
8 negatively charged, okay, then you would
9 understand the term electrostatic attraction
10 meaning that these unlike charges attract each
11 other; would you not?

12 MS. PETERSON: Objection to form.

13 A I would understand it. It will just be
14 electrostatic interaction between negatively
15 charged particles and positively charged surface.
16 But when you look at the entirety of the claim,
17 it's not just attraction. It's holding, it's
18 inactivating.

19 Q Okay. We'll get to that. But certainly
20 electrostatic attraction, you understand what
21 that means, what the term means?

22 A Yes, I understand what electrostatic attraction
23 means.

24 Q Okay, good.

(Whereupon, Action Summary, was marked as Exhibit No. 11.)

4 Q Do you recognize this document?

5 A Yes, I do.

6 Q What is this?

7 A This is, I believe, the prosecution -- the USPTO
8 providing the examination of the 802 patent in
9 providing a communication based on the
10 examination.

11 Q You use this as an exhibit in your own report; am
12 I correct?

13 A Yes, I believe I had used this as one of the
14 exhibits in the report, but I don't recall
15 exactly which.

16 Q But you recognize the document?

17 A Yes, I do.

18 Q And do you recognize it as the office action
19 pertaining to the application that ultimately
20 issued as the 802 patent; is that correct?

21 A That's my understanding, yes.

22 Q I represent to you that this document is a true
23 copy of the USPTO non-file office action, dated
24 August 25, 2011, with a patent application that

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1 ultimately issued as the 802 patent. Now, please
2 read pages two through four of this document to
3 yourself and tell me when you're done.

4 A Okay.

5 Q Now, look at the patent, look at the preamble of
6 claim one. It says, "Method for electrostatically
7 inhibiting harmful particles from infecting an
8 individual through," et cetera. And the other
9 one in claim number two says, "A formulation for
10 electrostatically inhibiting harmful particles,
11 harmful particulate matter from infecting an
12 individual."

13 You see that, right?

14 A Yes.

15 Q Are you aware that prior to this office action,
16 instead of the word inhibiting, it was the word
17 preventing; are you aware of that?

18 A Yes. That's what the examiner has quoted here.

19 Q The examiner rejected the claim on the 112 first
20 paragraph indicating that there is not an
21 adequate written description or enablement to
22 support the term electrostatically preventing; is
23 that correct?

24 MS. PETERSON: Objection to form.

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1 A That's what the examiner is stating in this
2 office action.

3 Q Okay. Now, on page three, last paragraph, it
4 starts with the words -- page three, last
5 paragraph. It's a short paragraph, why don't you
6 read it aloud?

7 A On page three, you said, right?

8 Q Right.

9 A The paragraphs says, "In reading the present
10 specification as a whole, it appears the tenor
11 thereof is that infections, whether they cause
12 pathology or not, may be inhibited rather than be
13 prevented. The former allowing at least one
14 infectious material to pass into the system of
15 the host rather than the latter, which indicates
16 that not even one of the infectious material is
17 allowed to infect, that is to pass into the
18 system of the host."

19 Q What does that paragraph mean to you?

20 A Well, according to this examiner, it seems that
21 the word inhibited, as opposed to prevented,
22 allows for partial, there's some sort of -- it
23 allows for some of the infectious materials to
24 pass and others to be prevented. But if you use

the term prevented, according to his analysis, is
that everything has to be prevented.

3 Q Okay. So in other words, what you're saying is
4 that by -- and, in fact, if we look at the bottom
5 of page -- let's say the examiner did indicate
6 that to cure the problem, you can amend the claim
7 if you change the word prevented to inhibited; is
8 that right?

9 MS. PETERSON: Objection to form.

10 A I'm not sure they're using the term cure, but it
11 says overcoming the rejection below, delete the
12 term preventing and replacing it with the term
13 inhibiting.

14 Q Okay. In other words, the difference between
15 preventing and inhibiting is that some harmful
16 particles under the inhibiting standard, some
17 harmful particles could get through, and others
18 would be prevented from -- would not infect the
19 individual; is that what -- do you see that
20 there?

21 MS. PETERSON: Objection to form.

22 A You know, I'm reading the examiner's opinion
23 here. You know, I don't agree. You could have
24 similarly preventing. You can have partial

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1 prevention or full prevention.

2 Q But inhibiting, according to the examiner, seems
3 to mean that you have partial prevention.

4 A Again, you can still use partial prevention or
5 full prevention. I don't see why inhibiting
6 somehow overcomes that. But again, looking at
7 the totality of this claim, you know, to me, the
8 term inhibiting also supports this idea that
9 somehow you're going to be resisting that
10 infection.

11 Q Okay. So you can see that the examiner understood
12 what the word inhibiting meant in the context of
13 the claim, right?

14 MS. PETERSON: Objection to form.

15 A I understand what the examiner meant. I don't
16 agree with the examiner, but I understand what he
17 means.

18 Q Do you believe that the examiner is a person of
19 ordinary skill in the art?

20 A I don't know what -- I don't know what his
21 qualifications are.

22 Q But you do understand what he means by the term
23 inhibiting, right?

24 A I understand what's in the office action, yes.

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1 Q And as a matter of fact, that's when the patent
2 office says that that's what it means, that's
3 what it means, correct?

4 MS. PETERSON: Objection to form.

5 A That's their opinion that they are providing in
6 the office action. But clearly, when I review
7 the claims from a person of skill in the art, to
8 me, inhibiting means you're able to prevent
9 infection.

10 Q Okay. So now, electrostatically inhibiting,
11 doesn't that mean that it uses electrostatics?

12 A You know, that would be the interpretation that
13 it uses electrostatics, yes.

14 Q So from a plain and ordinary meaning, in light of
15 this office action, electrostatically inhibiting
16 is a definite term, it's something that you can
17 understand that's inhibiting, which you
18 understand what it means, using electrostatics;
19 am I correct?

20 MS. PETERSON: Objection to form.

21 A Again, if you're just looking at those two terms
22 outside of the totality of the claims and in view
23 of the specification, that's what it means,
24 electrostatically inhibiting, meaning inhibiting

1 based on electrostatic. But you have to read the
2 entirety of the claim and you have to look at in
3 view of the specification.

4 Q Is there anything in the specification that would
5 change that definition?

6 A Well, the fact that when you're talking about
7 harmful particulate, it is a list of harmful,
8 which ones would be inhibited and at what degree
9 would it -- you know, is the allergens inhibited
10 through the same level as anthrax?

11 Q Okay. That's a very good question. Do you
12 believe that one can patent a general medication
13 or a general pharmaceutical formulation that
14 would cover a wide range of pathogens or harmful
15 particles or does it have to be restricted, does
16 the patent have to be restricted to a single
17 harmful particle or can it be general?

18 MS. PETERSON: Objection to form.

19 A Again, I have to look at the specifics of that
20 patent and the claims of that patent to make that
21 opinion. What I'm doing is I'm reviewing data
22 too, and my opinions for the 802 is that when
23 you're looking at the claims in view of the
24 specification, you have to consider everything

1 that's in the specification as well.

2 Q Okay. But you did say that understood what
3 electrostatically inhibiting means, and when I
4 asked you is there anything in the specification
5 that would conflict with that understanding of
6 the definition, as was in the office action, as
7 well as the word electrostatic?

8 MS. PETERSON: Objection to form.

9 A Again, when I look at the meaning of the claim in
10 view of what is in the 802 patent, it says
11 harmful particulates. Those harmful
12 particulates, there's a spectrum. Some are more
13 harmful than others. So when you say inhibiting,
14 how much do you need to inhibit?

15 Q That's not what I'm asking. I'm asking, is there
16 anything in this specification that would
17 conflict with that meaning of the term?

18 A Meaning of just the term electrostatically
19 inhibiting?

20 Q Yes.

21 A Well, the fact that, you know, again, what level
22 of electrostatic field do you need?

23 Q That's not what I'm asking. I specifically
24 asked, is there anything in the specification,

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1 written down in the specification, that would
2 conflict with that meaning of the term?

3 MS. PETERSON: Objection to form.

4 A Again, I have to look at the entirety of the
5 specification. I don't look at just two terms in
6 the entire claim. I look at the totality of the
7 claim and then I look at the totality of the
8 patent.

9 Q Okay. Now, you're looking at the totality of
10 claim one. Okay, let's take a look at --
11 electrostatically inhibiting we know that --
12 essentially, this is a use. In other words, it
13 is a -- we're looking for a method for
14 electrostatically inhibiting, and essentially,
15 it's a use for the method, and it's also a use
16 for the formulation. So we're saying that this
17 is what the formulation does. It
18 electrostatically inhibits, okay. There is not -
19 - is there anything in the specification that
20 will conflict with what we're trying to do with
21 the formulation or the method?

22 MS. PETERSON: Objection to form.

23 A Again, the fact that the term, just
24 electrostatically inhibiting is, you know,

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1 meaning that it is stopping these particles and
2 there's phenomena of electrostatic. But other
3 than that, you know, the specification doesn't
4 tell anything about, any of the other properties
5 that are necessary to meet the claim limitations.

6 Q Doesn't electrostatically inhibiting, as it's
7 used in the claim, mean that it stops some
8 harmful particles from protecting an individual,
9 according to what the examiner came -- isn't that
10 what it means?

11 MS. PETERSON: Objection to form.

12 A Again, that's what the examiner is suggesting in
13 the office action, but a person of skill would
14 look at this and say when you look at the list of
15 different harmful pathogens, when you say
16 inhibiting, and inhibiting means allowing some of
17 them to go, what's the value? If you allow one
18 anthrax to go into your body, you still get
19 infected.

20 Q Right. But that's -- isn't that why the examiner
21 specifically changed preventing to inhibiting?

22 A No. But if the claim is directed towards
23 inhibiting and also inactivating, you have to
24 look at it in the context of specification. You

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1 know, if you get one Coronavirus in your body,
2 you still get infected.

3 Q But you are aware that the examiner made a ruling
4 in this particular case that if it was changed to
5 inhibiting, it would be acceptable; is that
6 correct?

7 MS. PETERSON: Objection to form.

8 A It would be acceptable to him.

9 Q Okay. But he is essentially an official in the
10 U.S. Government; is he not?

11 A I mean, this is his opinion. That's what he's
12 providing in the office action.

13 Q Let's take a look at the claim, and we're going
14 to talk about claim -- take a look at claim
15 number two. We know for the plain meaning of the
16 term, of what electrostatically inhibiting
17 harmful particulate matter, in other words,
18 that's the intended use of the formulation, okay.
19 So in other words, you understand that
20 electrostatically inhibiting harmful particulate
21 matter from infecting an individual through nasal
22 inhalation is an intended use of the formulation;
23 is that correct?

24 MS. PETERSON: Objection to form.

1 A Again, that's mentioned here in the claim, but
2 you have to look at it in the context of the
3 other limitations. It's formulation comprising
4 at least one cationic agent and a biocidic agent,
5 and then it's attracting the particulate matter
6 into a thin film holding that particulate matter
7 and adjusting for the adhesion of the thin film.

8 Q All right.

9 A All of those other elements have to be met as
10 well.

11 Q Let's take a look at the formulation itself,
12 okay. We're speaking about a formulation that
13 has an intended use, okay. And where the
14 formulation is applied to the skin or tissue of
15 the nasal passage; you understand that, don't
16 you?

17 A Are you just asking me to see what's in the
18 claim?

19 Q Yes. In other words, I'm looking at the preamble
20 of the claim two. The formulation applied to the
21 skin or tissue of the nasal passages of the
22 individual, right?

23 A That's what the claim is written. That's the way
24 it was written.

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1 Q You understand that, right? Is there some reason
2 that you don't understand that?

3 MS. PETERSON: Objection to form.

4 A I understand what's written. But what I'm trying
5 to explain is the fact that when you look at that
6 preamble, you also have to look at the other
7 elements.

8 Q What is in the preamble is applied to thin film,
9 okay. And formulation comprises at least one
10 cationic agent and at least one biocidic agent.
11 Is that understandable?

12 MS. PETERSON: Objection to form.

13 A Yes. I can read what's written in the claim.

14 Q What does it mean?

15 A That in this formulation, the ingredients of the
16 composition should have at least one cationic
17 agent and at least one biocidic agent. And then
18 wherein said formulation once applied, has other
19 elements.

20 Q So basically, you would agree that examples of
21 the cationic agents and biocidic agents are
22 included in the specification; is that not
23 correct?

24 A Again, this is a laundry list of different kinds

of cationic agents, and certainly laundry lists
of some of these that are biocidic as well.

3 Q Okay. But there's at least one of each, right?

4 A But it doesn't tell you which one and it doesn't
5 say anything about how much --

6 Q That's not what I asked. Specifically, it says
7 it has to have, that the formulation has to have
8 a cationic agent and a biocidic agent. And
9 examples of that, of those agents, are given in
10 the specification. They're listed in the
11 specification; am I correct?

12 A Those examples are given, but again, for person
13 of skill looking at this claim too, they will
14 look at which ones of those will actually do the
15 function that are described in element A, B, and
16 C.

17 Q All right, that's reasonable. That's reasonable.
18 Now, let's go on to element A, okay.
19 Electrostatically attracts the particulate matter
20 to the thin film. Before you said you know what
21 that means?

22 MS. PETERSON: Objection to form.

23 A No. What I'm saying is that is, that element,
24 when you look at in the context of these

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1 composition without any specific amounts of any
2 specific type of ingredient, you don't know which
3 particulate matter in the specification. They
4 have all kinds of particulate matters.

5 Q Is a claim supposed to be a manufacturing
6 specification?

7 A No, it's not a manufacturer. It's a function
8 claim, and therefore, to function in this way,
9 when you have so many different kinds of
10 particulate matter, how would all of those
11 particulate matter somehow bind electrostatic?

12 Q Okay. We know that the formulation has a
13 cationic agent; is that correct? Because it says
14 so, all right. A cationic agent. One of those
15 that are listed there. We know that the
16 formulation has that, okay.

17 Now, if we have the cationic agent and
18 we know some harmful particles are negatively
19 charged, would they be attracted to the thin
20 film?

21 A Again, depends on whether the cationic agent is
22 actually exposed to the outside of the thin film.

23 Q But it could be -- electrostatic attraction could
24 be there; am I correct?

1 A Again, depends on what type of charge you have
2 and which type of particulate matter. Would you
3 get the same level of attraction irrespective of
4 any particulate matter? No.

5 Q Is it required that it would have the same
6 effective quantity or effect for all cationic
7 agents for all harmful particles or can it vary?

8 A Again, I mean, I read the claim in view of all
9 the different elements, if there is something
10 that will actually attract and hold and
11 inactivate. And you look at the specification
12 and it says all of these different bacteria and
13 viruses and allergens are inhibited, that's how I
14 interpret the claim.

15 Q If there was only one cationic agent and one
16 bacteria, would this be a valid --

17 A That's not the claim. I'm reading the claim of
18 the 802. I'm not reading some other hypothetical
19 patent.

20 Q If the claim consists of one of the cationic
21 agents that is listed in the specification, one
22 of them, and it contains one specific harmful
23 particle that is also listed in the
24 specification, and it contains a sufficient

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1 quantity, would that expressions be
2 understandable to you?

3 MS. PETERSON: Objection to form.

4 A Again, that's not the claim of the 802. I'm
5 reading the claim as written by the patentee. So
6 to me, I interpret what's on the paper, not some
7 hypothetical.

8 Q Okay. Let's look at B. One of the things that
9 you indicated was that the term adequate
10 impermeability is not evident. Why do you say
11 that?

12 A Well, again, looking at the claim element, if
13 you're looking at 2B, where it holds the
14 particulate matter in place by adjusting the
15 adhesion of the thin film to permit said thin
16 film to stick to the skin or tissue and by
17 adjusting the cohesion of the formulation to
18 provide adequate impermeability to the thin film.
19 So when you look at in totality, that claim
20 element, what it's saying is that it's going to
21 be a thin film that will basically prevent these
22 harmful particulate matter from passing from one
23 side or the other. I believe that adequate
24 impermeability is indefinite because it doesn't

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1 say what level of impermeability is acceptable.

2 Q Well, isn't adequate a term of degree?

3 A A degree of what? Again, for anthrax, what level
4 of impermeability do you need?

5 Q Do you understand that in a patent you could have
6 terms of degree, for example, like sufficient
7 quantity or adequate efficiency? Is it possible
8 to have terms of degree like that in a claim, in
9 a patent claim?

10 MS. PETERSON: Objection to form.

11 Q Do you know whether it's possible?

12 A Again, maybe in some of those other patents,
13 again, depending on the teaching, the art, to
14 those patents. Here, I'm focusing on the 802.

15 Q Okay, fine. Let's deal with that. What does the
16 term adequate mean? Give me a dictionary
17 definition in your mind what the term adequate
18 means.

19 MS. PETERSON: Objection to form.

20 A Again, I don't know exactly, you know, in terms
21 of the impermeability, what the claim language
22 here suggests is that it's some level of
23 impermeability, but it doesn't explicitly state
24 what that means. And if you looked at in the

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1 context of preventing infection, then it becomes
2 indefinite because if --

3 Q Well --

4 A Let me finish.

5 Q Go ahead. Sure.

6 A Different particulates have different
7 pathogenicity. So what impermeability are you
8 looking for if you're thinking potentially a
9 very, very deadly pathogen?

10 Q Okay. So basically what adequate impermeability
11 should mean, and correct me if I'm wrong, should
12 be that the permeability has to be adequate for
13 the purpose of preventing the pathogen from
14 penetrating the thin film, is that not correct?
15 Wouldn't that be the definition of adequate in
16 this case for that particular purpose?

17 A Well, again, if that's the definition, then --
18 and that's why it's indefinite, because different
19 pathogens require different levels of
20 impermeability depending on how potent they are.

21 Q But for a given pathogen, let's say any given
22 pathogen, the term adequate impermeability would
23 not be indefinite; would it, for a given
24 pathogen?

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1 MS. PETERSON: Objection to form.

2 A Again, but that's not here. In context of the
3 802 and these claims, it doesn't explicitly say,
4 this is the pathogen. It says all of these
5 pathogens and allergens.

6 Q So in other words, you can't come with a claim
7 that would be general then? You couldn't claim
8 more broadly than is in the specification; is
9 that correct?

10 A But you have to inform a person of skill what
11 that meaning of the claim is in view of the
12 specification. Right now the specification is
13 listing all of these different particulate
14 matter, harmful particulate matter, and you have
15 a term like adequate impermeability, doesn't say
16 to a person of skill in the art, doesn't explain
17 of what level of impermeability you need.

18 Q So in other words, you're saying that because the
19 specification in this patent is not definite as
20 to exactly what pathogen you're going to use and
21 exactly what cationic agent you're going to use,
22 and what the exact concentration is, that the
23 whole thing, the claim is indefinite?

24 MS. PETERSON: Objection to form.

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1 A No. What I'm looking at is interpreting the
2 claims in view of the specification, and I'm
3 basically opining in my declaration the specific
4 sections that I feel, for example, adequate
5 impermeability is indefinite, because each of
6 these different pathogens in particulate matter
7 will have differential impermeability that would
8 be necessary to prevent them from infecting the
9 host.

10 Q Okay. So that is what you believe adequate
11 impermeability to be? In other words, you've
12 just given me a definition of adequate
13 impermeability, where you said it depends on the
14 specific pathogen and the specific adjustments of
15 the adhesion and cohesion? You just gave me that
16 definition.

17 A Again, that would be, you know, the way I would
18 interpret specifically the term claim, the claim
19 language of adequate impermeability in the
20 context of the specific type of particulate
21 matter. But the claims are not directed to any
22 type of particulate matter. They're directed to
23 broad. The claims are very broad, and when you
24 look at the claims in view of the specification,

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1 you see that those particulate matter can be
2 anything.

3 Q And you feel that that's not permissible?

4 A Well, in that sense, for a person of skill in the
5 art, the claim would be indefinite for that
6 reason.

7 Q But you, as a person of skill in the art, would
8 be able to perform experimentation using those
9 ingredients and to develop a -- would you be able
10 to develop a formulation using those ingredients
11 that would do what you need to do?

12 MS. PETERSON: Objection to form.

13 A Not based on the teaching of the 802. Again, as
14 I've testified before, the 802 has a list of
15 different ingredients and ranges. So I would
16 have to -- you know, this is the definition of a
17 new experimentation.

18 Q Wouldn't different percentages have different
19 effects on different people?

20 MS. PETERSON: Objection.

21 A I'm not sure what you mean by that.

22 Q Okay. Let's continue. The next thing that we're
23 speaking about is renders said particular matter
24 harmless. Now, we know what the definition, the

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1 dictionary definition of harmless is. But can
2 the prosecution history change that definition?

3 MS. PETERSON: Objection to form.

4 A Again, I don't know if that's, you know, a legal
5 interpretation. As I do my analysis, I look at
6 it from a technical and from a person of skill in
7 the art. And harmless is also subjective.

8 Q Okay. Subjective. As a matter of fact, if you
9 look on page one of the patent, the very first
10 page. Why don't you read the abstract, the full
11 abstract?

12 A You want me to read it aloud?

13 Q Please.

14 A "A product to reduce, a method of reducing the
15 risk of inhalation of harmful substances by
16 applying a formulation composition to a substrate
17 or the skin in close proximity of one or more
18 nostrils. This formulation when applied creates
19 an electrostatic field having a charge. The
20 electrostatic field attracts airborne
21 particulates of opposite charge to the substrate
22 and are in close proximity to the substrate close
23 to the skin. And a biocidic agent renders
24 microorganisms coming in contact the substrate or

1 skin less harmful."

2 Q Less harmful, okay. So basically, that was the
3 -- because it were inhibiting, and not
4 preventing, the term less harmful means that
5 perhaps some can get through, some can't; am I
6 right?

7 MS. PETERSON: Objection to form.

8 A Again, if you look at the specification about
9 some of those harmful agents, you know, these
10 could be anything from allergens to bacteria to
11 viruses, to all different kinds of pathogens. So
12 what is less harmful for, you know, fungals or
13 what is less harmful for Coronavirus getting in?
14 What's less harmful for smallpox virus? What's
15 less harmful for influenza virus?

16 Q Okay. When you read scientific articles, do the
17 scientific articles have an abstract?

18 A They do.

19 Q When you read an abstract, do you typically
20 understand what it is that the article is trying
21 to convey before you read it?

22 A I usually read the abstract, but I also look at
23 the conclusion and also look at, if I'm
24 interested in that particular research, I would

1 look at the methods.

2 Q But reading the abstract that you just read, as a
3 separate item, forget the rest of the patent, if
4 you were looking at this abstract trying to
5 figure out whether you were going to read this
6 patent, is that abstract understandable?

7 A Again, when a person of skill looks at the
8 patent, they look at the entirety of the patent.
9 They're not just looking at the abstract. So you
10 have to look at the patent in total, and you look
11 at the abstract in the context of other sections
12 of the specification.

13 Q Doesn't this abstract specifically state what the
14 formulation and the methodology is going to do?
15 Doesn't it say it in black and white?

16 A Again, abstract by itself has certain sentences,
17 but you don't just look at the abstract. You
18 look at the claims. You look at other sections
19 of the specification. And when you start to
20 interpret these harmful particulates in the
21 specification column three, you have descriptions
22 of what those harmful particulates are. It's
23 right on line 44 up to -- continues all the way
24 up to line 65.

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1 MR. KREMEN: I have nothing more.

2 MS. PETERSON: I don't have any
3 questions. The witness will review and reserve
4 the right to make corrections to the deposition
5 and will sign it.

6
7 (Whereupon, the deposition in the
8 above-entitled matter concluded at 12:20 p.m.)
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1 C E R T I F I C A T E

2 COMMONWEALTH OF MASSACHUSETTS

3 COUNTY OF PLYMOUTH, SS

4 I, Susan Baxter, a Professional Court Reporter
5 and Notary Public in and for the Commonwealth of
6 Massachusetts, do hereby certify that the foregoing
7 deposition of MANSOOR AMIJI, was taken before me on
8 October 14, 2022. The said witness was satisfactorily
9 identified and duly sworn before the commencement of
10 his testimony; and that such deposition is a true
11 record of the testimony given by the witness.

12 I am not connected by blood or marriage with any
13 of the said parties, nor interested directly or
14 indirectly in the matter in controversy.

15 In witness whereof, I have hereunto set my hand
16 and Notary Seal this 17th day of October, 2022.

17
18 

19 Susan Baxter, Notary Public

20 My Commission Expires:

21 February 21, 2025

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1 CASE: TRUTEK CORP. VS. BLUEWILLOW BIOLOGICS, INC.

2 DEPOSITION OF: MANSOOR AMIJI

3 DATE: October 14, 2022

4 The above-referenced transcript is available for
5 review.

6 Within the applicable timeframe, the witness
7 should read the testimony to verify its accuracy. If
8 there are any changes, the witness should note those
9 with the reason on the attached Errata Sheet.

10 The witness should sign the Acknowledgment of
11 Deponent and Errata and return to the deposing
12 attorney. Copies should be sent to all counsel, and
13 to Veritext at CS-NY@veritext.com.

14 Return completed errata within 30 days from
15 receipt of testimony.

16 If the witness fails to do so within the time
17 allotted, the transcript may be used as if signed.

18 Yours,

19 Veritext Legal Solutions

20

21

22

23

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1 CASE: TRUTEK CORP. VS. BLUEWILLOW BIOLOGICS, INC.

2 DEPOSITION OF: MANSOOR AMIJI

3 E R R A T A S H E E T

4 PAGE LINE PRESENTLY READS SHOULD READ

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1 CASE: Trutek Corp. Vs. BlueWillow Biologics, Inc.

2 DEPOSITION OF: Mansoor Amiji

3 Acknowledgment of Deponent

4 I, Mansoor Amiji, do hereby declare that I
5 have read the foregoing transcript, I have made
6 any corrections, additions, or changes I deemed
7 necessary as noted above to be appended hereto,
8 and that the same is a true, correct and complete
9 transcript of the testimony given by me.

10 _____

11 Mansoor Amiji

Date

12 *If notary is required

13 SUBSCRIBED AND SWORN TO BEFORE ME THIS

14 _____ DAY OF _____, 20___.
15 _____

16 Notary Public

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[& - 802]

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[802 - allege]

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[allergens - art]

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[binder - charge]

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[charged - commencement]

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[commencing - correct]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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